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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2021-000486

THE STATE, Respondent,

v.

TREMAINE O'KEEFE PRIDE, Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I.

Did the trial judge err in allowing Appellant's trial to proceed in his absence when Appellant received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order, and when Appellant was notified of his trial date, both orally and in writing, by his trial attorney on three occasions?

II.

Did the trial judge abuse his discretion in allowing the testimony of Lieutenant Whitfield Brooks when Brooks' testimony was not influenced by the testimony he overheard in violation of the sequestration order, and any error in the admission of the testimony was harmless in light of the evidence against Appellant and how Appellant used Brooks' testimony?

III.

Did the trial judge err in refusing to instruct the jury using Appellant's preferred definition of reasonable doubt when the trial judge was not required to define the term or give a specific definition, yet the trial judge nonetheless provided a thorough and correct definition of reasonable doubt that did not prejudice Appellant?

STATEMENT OF THE CASE

In August 2018, a Greenwood County Grand Jury indicted Appellant for one count of trafficking cocaine base of twenty-eight grams or more, 3rd offense and one count of resisting arrest. On December 11-12, 2018, a jury trial was held in the Greenwood County Court of General Sessions with the Honorable Donald B. Hocker presiding. Appellant was represented by Andrew M. Hodges, Esq. The State was represented by Deputy Solicitor Demetrios Andrews and Assistant Solicitor Wade Dowtin of the Eighth Circuit Solicitor's Office. Appellant did not appear for the trial and was tried in his absence. At the conclusion of trial, the jury convicted Appellant of both offenses. Appellant's sentence was sealed by Judge Hocker. On April 29, 2021, Judge Hocker's sentence was read to Appellant by the Honorable Frank R. Addy. Judge Hocker sentenced Appellant to twenty-five years' imprisonment for trafficking cocaine base and one year imprisonment for resisting arrest. Each of those sentences were to run concurrently with each other, resulting in an aggregate total of twenty-five years' imprisonment. Appellant timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

On April 18, 2018, agents with the City of Greenwood Police Department attempted to serve an active arrest warrant on Appellant. (Tr. 68-70). As Agent Wesley McClinton, Lieutenant Whitfield Brooks and Agent Sammy Evans turned onto Gray Street, they witnessed Appellant sitting in a chair leaning against one of the apartment buildings. (Tr. 70-71). When McClinton advised Appellant he was under arrest, Appellant immediately ran behind the apartment building. (Tr. 71). McClinton attempted to use his taser to subdue Appellant, but was unsuccessful. (Tr. 71-72). Just before Agent Evans was able to catch up to Appellant, Appellant reached into his sock and pulled out "a golf size bag of narcotics" and threw it. (Tr. 72, lines 13-15). Evans detained Appellant while McClinton retrieved the suspected bag of narcotics. (Tr. 72). McClinton's interaction with Appellant was recorded on his body camera and played for the jury at trial. (Tr. 80, State's Exhibit #5 and #6). McClinton took the suspected drugs and secured them in Brooks' vehicle. (Tr. 74). During the arrest, law enforcement also collected a set of digital scales and approximately $380 in cash off of Appellant's person. (Tr. 75, 95). McClinton took the suspected drugs back to the Police Department, weighed them, and did an initial field test which confirmed the substance was cocaine base or crack cocaine. (Tr. 75). McClinton packaged the drugs in a BEST kit and placed the drugs in the evidence locker at the police department. (Tr. 76).

After the drugs were placed in the evidence locker, they were retrieved the following day by Evidence Technician Kenya Griffin. (Tr. 109). Griffin took the drugs to SLED on April 27, 2018. (Tr. 110). Once the drugs were at SLED, Forensic Chemist Shannon Sorrells weighed and analyzed the substance. Sorrells opined the substance was 29.06 grams of cocaine base. (Tr.

125). Griffin received the drugs back from SLED on July 19, 2018. (Tr. 111). At the conclusion of trial, Appellant was convicted of trafficking cocaine base 3rd offense and resisting arrest.

STANDARD OF REVIEW

I.

"In criminal cases, an appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous." State v. Banda, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006).

II.

"Whether a witness should be exempted from a sequestration order is within the trial court's discretion." Constant v. Spartanburg Steel Prods. Inc., 316 S.C. 86, 91, 447 S.E.2d 194, 197 (1994). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

III.

"Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). "A jury charge that is substantially correct and covers the law does not require reversal." State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011). "The standard of review of an ambiguous 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. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000).

ARGUMENT

I.

The trial judge did not err in allowing Appellant's trial to proceed in his absence because Appellant received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order. Furthermore, Appellant was notified of his trial date, both orally and in writing, by his trial attorney on three occasions.

Appellant argues the trial court erred in allowing Appellant to be tried in his absence when Appellant's bond order[1] listed an arrest warrant number, 2018A2420100383, that corresponded with the offense of trafficking in cocaine, 3rd offense rather than the offense of trafficking in cocaine base, 3rd offense that Appellant ultimately stood trial for in absentia. Appellant frames this issue as a question of "whether a defendant who is released on bond as to one charge can be tried in his absence for a separate charge from that listed in the bond?" (Initial Brief of Appellant 5). As an initial matter, the premise that Appellant's argument is based on is fundamentally flawed. Appellant was not released on a bond order for trafficking cocaine, 3rd offense. Rather, Appellant was clearly notified that he faced a charge of trafficking crack cocaine, 3rd offense in the text of the bond order, the body of his arrest warrant, and at his bond hearing. (Bond Order, Bond Hearing 4, Arrest Warrant). However, even if this Court accepts the flawed premise upon which Appellant's argument is based, Appellant's framing of the issue obscures the true question that faced the trial judge and faces this Court: did Appellant waive his right to be present at trial? The answer to this question is yes. Appellant received written notice of his right to be present at trial and was warned he would be tried in his absence should he fail

[1] Curiously, despite Appellant's bond order being essential to Appellant's argument, Appellant did not designate the bond form or the bail form to be included as part of the record on appeal for this Court's consideration. (Appellant's designation of matter). See State v. Stewart, 435 S.C. 405, 413, 867 S.E.2d 33, 37 (Ct. App. 2021) (holding an appellant has a duty to provide an appellate court with a record sufficient to review the issues on appeal).

to attend via his bond form and bail form. (Bond Order 7, Bail Form 2). Even if notice via the written bond order was not sufficient to notify Appellant he would be tried in his absence, trial counsel stated he gave Appellant oral notice of his trial date on two occasions and written notice on a third occasion. Therefore, the trial judge properly determined that Appellant waived his right to be present at trial and the trial judge's decision was supported by facts in the record.

"It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence." State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010). However, "before a defendant may be tried in absentia, the trial court must determine a defendant voluntarily waived his right to be present at trial." State v. Fairey, 374 S.C. 92, 100, 646 S.E.2d 445, 448 (Ct. App. 2007). "The Judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend. Ravenell, 387 S.C. at 456, 692 S.E.2d at 558. See also Rule 16 SCRCrimP ("...a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court."). "Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present." City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006). "Further, a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear." Ravenell, 387 S.C. at 456, 692 S.E.2d at 558.

Appellant's argument fails for three reasons. First and foremost, Appellant's assertion that he was released on a bond order that listed the offense of trafficking cocaine, 3rd offense is plainly contradicted by the text of the bond order. (Bond Order 1). The very first page of Appellant's bond order states that he is facing a charge of "Trafficking Crack 3rd". (Bond Order 1). Additionally, the body of Appellant's arrest warrant lists "crack cocaine" as the substance that Appellant is accused of trafficking and Appellant was informed at the very outset of his bond hearing that he was before the court on a motion seeking bond for "a trafficking crack third offense." (Arrest Warrant, Bond hearing 4, line 7). The trial judge was keenly aware of these facts when he ruled: "And I'm going to deny your motion based upon the fact that the body of the warrant sufficiently states the drug involved was crack cocaine. The—the bond order and the bond hearing all reference crack cocaine." (Tr. 37, line 23-Tr. 38, line 2). Therefore, Appellant's assertion that he was released on a bond order for a different offense or that he was somehow unaware of what offense he was being charged with is specious, at best.

Second, even if the flawed premise of Appellant's argument is accepted, Appellant's argument still fails because Appellant received written notice of his right to be present for trial and was warned that he would be tried in his absence should he fail to attend. Appellant's bail form stated the following: "I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence. (Bail Form 2). Appellant indicated his consent to this statement by his signature. (Bail Form 2). Furthermore, Appellant's bond order states "FAILURE TO APPEAR AT TRIAL WILL RESULT IN A TRIAL IN DEFENDANT'S ABSENCE." (Bond Order 7)(all caps in original).

Finally, even if the written notice provided in the bail form and bond order were insufficient to advise Appellant that he would be tried in his absence, Appellant was notified by his trial attorney of his trial date on three separate occasions. When asked by the trial judge, trial counsel for Appellant stated: "Your Honor, I had a conversation with my client on October 4th, which I orally notified him of the trial date. Another oral conversation with him on November 26th. And then written communication on November the 28th." (Tr. 40, lines 12-16). The trial judge appropriately took evidence of the written and verbal notices Appellant received of his trial date into consideration and rendered the following ruling;

> The Court: So, again, I'm going to revisit the two specific findings that I must make under the Wrapp[2] case, one, did [Appellant] receive notice of a specific term of court that he needed to be present? I find that he did, based upon Mr. Hodges' oral communication on October 4th and November 26th to [Appellant], and his written communication on November 28th.
>
> Secondly, was [Appellant] sufficiently apprised of the fact that if he did not attend his trial that he would be tried in his absence? And based upon Court's Exhibit No. 3[3], he signed an acknowledgement on the second page, which indicates—I'm just going to quote from the acknowledgement that he signed on September 11th of 2018, I understand and have been informed that I have a right and obligation to be present at trial. And should I fail to attend the Court, the trial will proceed in my absence. So the motion to continue is denied. And we will proceed forward with a trial in [Appellant]'s absence.

(Tr. 40, line 25-Tr. 41, line 17). The trial judge did not err in allowing Appellant's trial to proceed in his absence. Appellant's convictions and sentences should be affirmed.

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[2] State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (2017).

[3] The trial judge seems to be referring to Appellant's Bail Form, although the transcript does not show when it was marked as Court's Exhibit #3.

II.

The trial judge did not abuse his discretion in allowing the testimony of Lieutenant Whitfield Brooks when Brooks' testimony was not influenced by the testimony he overheard in violation of the sequestration order, and any error in the admission of the testimony was harmless in light of the evidence against Appellant and how Appellant used Brooks' testimony.

Appellant next argues the trial judge erred in failing to exclude the testimony of Lieutenant Whitfield Brooks who violated the trial judge's sequestration order. In support of his argument Appellant asserts: "Here the testimony of the two officers related to the seizure and chain of custody of the seized items. Under such circumstance, prejudice can be and should be presumed." (Initial Brief of Appellant 8). Appellant's argument fails for two reasons. First, the trial judge did not abuse his discretion in allowing Brooks to testify. Before Brooks was allowed to testify, the trial judge allowed Brooks to testify *in camera*. Brooks testified that while he overheard the testimony of two prior witnesses, their testimony had no effect or influence on his testimony. (Tr. 102). Additionally, Brooks did not handle or move the items after they were placed in his car. (Tr. 102, 106). Therefore, Brooks was not a part of the chain of custody. (State's Exhibit #9). Second, even if the trial judge admitted Brooks' testimony in error, any error was entirely harmless. Far from being prejudiced by Brooks' testimony, Appellant used it to his advantage in closing argument to suggest the absence of Brooks' name from the chain of custody form raised reasonable doubt about the authenticity of the drugs. (Tr. 155). For both of the aforementioned reasons, the trial judge's decision to allow Brooks to testify was not reversible error.

"At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion." Rule 615 SCRE. However, "a party is not entitled to the sequestration of witnesses as a matter of right. The

decision to sequester witnesses is left to the sound discretion of the trial judge." State v. Tisdale, 338 S.C. 607, 616, 527 S.E.2d 389, 394 (Ct. App. 2000). "Whether a witness should be exempted from a sequestration order is within the trial court's sound discretion." Gattison v. South Carolina State College, 318 S.C. 148, 151, 456 S.E.2d 414, 415 (Ct. App. 1995). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006).

Here, Appellant made a motion to sequester witnesses before trial. (Tr. 48). Prior to Brooks testifying, Appellant moved to exclude Brooks' testimony because he was present for the testimony of Wesley McClinton and Sammy Evans. (Tr. 97). The trial judge appropriately asked Brooks to testify *in camera* to determine the extent to which, if any, Brooks' testimony was influenced by his presence during the testimony of McClinton and Evans. During Brooks *in camera* testimony, the following exchange with the trial judge occurred:

> The Court: Officer Brooks, did the drugs ever change location from where Officer McClinton put them in the vehicle?
>
> Brooks: No, sir.
>
> The Court: Okay. Has any of the testimony from the prior two witnesses had any influence whatsoever on the testimony you've given today?
>
> Brooks: No, sir.

(Tr. 102, lines 8-14). As the preceding exchange indicates, the trial judge properly determined during the *in camera* hearing that Brooks was not part of the chain of custody, nor was he influenced the testimony he overheard.

Even if the trial judge erred in allowing Brooks to testify, any error was entirely harmless. Brooks was not part of the chain of custody, thus his testimony was cumulative to the

testimony of the State's other witnesses. (Tr. 102, 106, State's Exhibit #9). However, even if Brooks were part of the chain of custody, his testimony was not necessary to admit the drugs that Appellant discarded from his sock. See State v. Sweet, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (2007)("Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." See also State v. Taylor, 360 S.C. 18, 26, 598 S.E.2d 735, 738 (Ct. App. 2004)("If the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, absent proof of tampering, bad faith, or ill-motive."). Because the State did not require Brooks' testimony to complete the chain of custody, Appellant was not prejudiced by the trial judge's ruling.

Brooks' testimony ultimately had no bearing on the outcome of Appellant's trial. The jury was convinced of Appellant's guilt by the testimony of Officer McClinton and his body camera footage which showed Appellant throwing crack cocaine from his sock as he fled law enforcement; not by Brooks' limited testimony regarding who had access to his car. (State's Exhibit #5 and #6). Furthermore, Appellant used Brooks' testimony to his advantage in the following argument to the jury:

> Mr. Hodges: Who's the next witness that you heard from? Lieutenant Brooks. And the first question the solicitor was asking him, Did you expect to testify today?
>
> No.
>
> How long have you known you were going to testify?
>
> About 10 minutes.
>
> I submit to you, the State was scrambling around to try to plug that hole in their chain of custody. And I would invite you to look at the paperwork that was submitted to you about the chain of custody. There's a form here certifying who's in the physical chain of custody. Lieutenant Brooks' name is not anywhere on the

> paperwork. Which then begs the question, you know, is there anybody else that had custody of this that's no on the paperwork that we don't know about? I mean, we discovered the one because it happened to be on the video. But, you know, who else's hands did this go through?

(Tr. 155, lines 5-21). Because the trial judge determined that Brooks' testimony was not influenced by the testimony that he overheard, the trial judge did not abuse his discretion in allowing Brooks to testify. And because Brooks' testimony was not necessary to establish a chain of custody and was even used to Appellant's advantage in closing, any error in its admission is harmless.

III.

The trial judge did not err in refusing to instruct the jury using Appellant's preferred definition of reasonable doubt, because the trial judge was not required to define the term or give a specific definition. Nonetheless, the trial judge provided a thorough and correct definition of reasonable doubt that did not prejudice Appellant.

Appellant finally argues that the trial judge erred in refusing to instruct the jury that a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Because the aforementioned language was not read to the jury, Appellant asserts he was "prohibited from making effective arguments." (Initial Brief of Appellant 12). Contrary to Appellant's argument, the trial judge was not required to give any definition of reasonable doubt, let alone Appellant's preferred definition. Instead, the trial judge gave a thorough definition of reasonable doubt that effectively mirrored a definition of reasonable doubt that has been explicitly approved by our Supreme Court. Furthermore, Appellant was in no way limited or prohibited from making an effective argument by the trial judge's jury instruction. Despite the trial judge's ruling, Appellant nonetheless argued in closing argument that if the jurors hesitated to convict then they would have a reasonable doubt. (Tr. 60-61, 157). Thus, the trial judge's instruction was correct and did not hinder Appellant's ability to defend himself.

"The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course." Victor v. Nebraska, 511 U.S. 1, 5 (1994). "Indeed, so long as the court instructs the jury on the necessity that the defendant's guilt be proven beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof." Id. "Rather, 'taken as a whole, the instructions [must] correctly conve[y] the concept of reasonable doubt to the jury.'" Victor 511 U.S. at 5 (quoting Holland v. United States, 348 U.S. 121, 140 (1954)).

"The trial court is required to charge only the current and correct law of South Carolina." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). In South Carolina, a trial judge is not required to instruct the jury on the meaning of reasonable doubt, let alone provide a specific definition for the term. State v. Johnson, 315 S.C. 485, 487, 445 S.E.2d 637, 637 (1994). However, if a trial judge chooses to instruct the jury on the meaning of reasonable doubt, our Supreme Court has expressly recognized two appropriate ways for reasonable doubt to be defined. State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 868 (1998).

Under the first accepted jury charge, the trial judge could choose to instruct the jury that "[a] reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act." Id. at 155, n.12, 508 S.E.2d at 868. However, under the second accepted jury charge, the trial judge could instruct the jury as follows:

> The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told [it] is only necessary to prove the fact is more likely true than not, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.
>
> Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world

> that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. The law doesn't require that.
>
> If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Id. However, neither of the accepted charges is mandatory, and the decision as to whether to define reasonable doubt at all rests entirely in each individual trial judge's discretion. Id.

Here, Appellant requested the trial judge included the "hesitate to act" language in his instructions to the jury. (Tr. 142). However, the trial judge declined and instead read the following reasonable doubt instruction to the jury:

> The defendant has plead not guilty to these indictments. And that pleas puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.
>
> I charge you that it is an important rule of the law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued, unless guilty has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.
>
> Now, this presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach or unless you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.
>
> The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant, which remains with the Defendant until or unless it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.
>
> The presumption of innocence is not mere legal theory. It's not just a legal phrase. It is a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.
>
> Now 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.
>
> Now, there are very few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence, you are firmly convinced the Defendant is guilty of the crimes charged, you must find the Defendant guilty. If, on the other hand, you think there's a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

(Tr. 159, lines 11-15- Tr. 161, line 4).

The trial judge's definition of reasonable doubt was nearly identical to the definition explicitly approved by our Supreme Court in Needs. Therefore, the trial judge provided the jury with a thorough and correct definition of reasonable doubt. Just because the trial judge refused to include Appellant's preferred language does not mean Appellant is entitled to have his conviction reversed. Appellant was not entitled to have any definition of reasonable doubt read to the jury, let alone his preferred definition.

Furthermore, Appellant was not prejudiced by the trial judge's ruling in any way. Appellant asserts his case is similar to our Supreme Court's holding in State v. Jones, and that he suffered the same kind of prejudice from the trial judge's refusal to charge the requested reasonable doubt definition that Jones did. Appellant's reliance on Jones is misplaced. In Jones, our Supreme Court held the trial court erred in removing "hesitate to act" language after Jones had already made his closing argument. State v. Jones, 343 S.C. 562, 577-578, 541 S.E.2d 813, 821 (2001). The Supreme Court found the removal of the language was unfair to Jones because Jones had explicitly told the jury that the trial judge would instruct them that a reasonable doubt is one that causes a reasonable person to hesitate to act. Id. The trial judge's decision to amend

his instruction after Jones had already argued had the effect of diminishing his credibility in the eyes of the jury. Id.

Unlike in Jones, the trial judge informed Appellant what definition of reasonable doubt he intended to charge before closing argument. Therefore, Appellant was free to tailor his closing argument to adhere to the trial judge's intended instruction. Also, unlike in Jones, the trial judge adhered to his proposed instruction and did not undercut or diminish Appellant's credibility with a revised definition that contradicted Appellant's closing argument. Appellant was not prohibited or hindered from telling the jury that a reasonable doubt is one that causes a reasonable person to hesitate to act. Indeed, both the State and Appellant had already told the jury in opening statements that a reasonable doubt is one which would cause a reasonable person to hesitate to act. (Tr. 57, 60-61). Far from being prohibited from making this argument in closing, Appellant essentially repeated his preferred definition when he told the jury "If you've got that inkling of doubt, if when you go back there and you **hesitate** to convict, that's reasonable doubt talking to you." (Tr. 157, lines 22-25)(emphasis added). Because the trial judge's definition of reasonable doubt was a correct statement of law that did not prejudice Appellant, Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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THE STATE,

Respondent,

v.

TREMAINE O'KEEFE PRIDE,

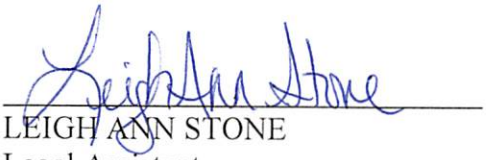
Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email to the address listed in AIS for:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This eleventh day of May, 2022.



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From: Leigh Ann Stone
Sent: Wednesday, May 11, 2022 9:41 AM
To: Rauch Wise
Cc: Scott Matthews; William Blitch
Subject: The State v. Tremaine O'Keefe Pride (2021-000486)
Attachments: PRIDE Tremaine - Cover Letter (IBOR) (02977039xD2C78).PDF; PRIDE Tremaine - IBOR (02977011xD2C78).PDF

Good Morning Mr. Wise,

Attached please find a copy of the Initial Brief of Respondent in The State v. Tremaine O'Keefe Pride (2021-000486). This brief will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

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