

STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT

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Certiorari to the Court of Appeals
Appeal From Williamsburg County
Hon. George C. James, Jr., Circuit Court Judge

S.C. Supreme Court

The State,

Respondent,

v.

Hazard Cameron,

Petitioner.

Opinion No. 2012-UP-278 (S.C. Ct. App. filed May 9, 2012)

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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TABLE OF CONTENTS

STATEMENT OF QUESTION PRESENTED 1

STATEMENT OF THE CASE 2

ARGUMENT 3

 I. The Court of Appeals correctly found the trial court’s
 charge to the jury on the law and the elements of
 armed robbery was appropriate when viewed as a
 whole. 3

 II. The Court of Appeals correctly affirmed the trial
 court’s denial of Petitioner’s motion to require the
 State to include the minimum sentence as part of its
 closing on the law. 7

CONCLUSION 10

STATEMENT OF QUESTION PRESENTED

- I. The Court of Appeals correctly found the trial court's charge to the jury on the law and the elements of armed robbery was appropriate when viewed as a whole.
- II. The Court of Appeals correctly affirmed the trial court's denial of Petitioner's motion to require the State to include the minimum sentence as part of its closing on the law.

STATEMENT OF THE CASE

The State agrees with Petitioner's procedural Statement of the Case.

ARGUMENT

I. The Court of Appeals correctly found the trial court's charge to the jury on the law and the elements of armed robbery was appropriate when viewed as a whole.

Petitioner contends the Court of Appeals erred in finding the charge given by the trial court was appropriate. The charge given, while not using the exact words requested by Petitioner, was a correct statement of the law. The trial court properly and thoroughly charged the jury on the elements of armed robbery and common law robbery. Further, the trial court properly and thoroughly charged the jury on the State's burden to prove Petitioner acted with criminal intent.

This Court recently discussed in detail the standard for reviewing the denial of a jury charge request:

"In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." A jury charge which is substantially correct and covers the law does not require reversal.

"[T]he trial court is required to charge only the current and correct law of South Carolina." "The law to be charged must be determined from the evidence presented at trial." "The substance of the law is what must be charged to the jury, not any particular verbiage."

"A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." "However, if the trial judge refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." "It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge." "If there is

any evidence to support a charge, the trial court should grant the request.”

“To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” A trial judge’s failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues. “An appellate court will not reverse the trial judge’s decision regarding a jury charge absent an abuse of discretion.”

State v. Brandt, 393 S.C. 526, 549-550, 713 S.E.2d 591, 603 (2011) (emphasis added) (internal citations omitted).

South Carolina Code Ann. § 16–11–330(A) (Supp. 2010) defines armed robbery in pertinent part as “robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.” Included in armed robbery is the lesser included offense of robbery, which is defined as “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” State v. Mitchell, 382 S.C. 1; 4, 675 S.E.2d 435, 437 (2009).

In the instant case, the judge charged the proper and correct law in South Carolina:

Now ladies and gentlemen, the Defendant is also charged with armed robbery. Now in order to prove this offense, the State must first prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person. Property is within the presence of a person if it is within that person’s reach, inspection, observation or control so that the person could, if not overcome with violence or prevented by fear, keep possession of the property. The State must also prove beyond a reasonable doubt that the Defendant carried the property away intending to permanently deprive

the owner of the property and to keep the property for the Defendant's own use. The slightest removal of the property or the complete possession of the property, even for an instant, by the Defendant is sufficient to show a taking and carrying away of the property. Ladies and gentlemen, I further charge you that the State just prove that the taking and carrying away of the property was done by violence or by putting the owner of the property in fear of violence.

(T.338-339; R. 285-286)(emphasis added).

The trial court also thoroughly and correctly charged the jury on criminal intent:

Now ladies and gentlemen, in order to establish criminal liability on the part of any person accused of a crime, the State must prove beyond a reasonable doubt the element of criminal intent. Criminal intent is a mental state of conscious wrong-doing. It's up to you to determine what, if anything, the Defendant intended to do based on the circumstances shown to have existed. Now the criminal intent can arise from an action or it can arise from a failure to act. And it's up to you, ladies and gentlemen, to determine what, if anything, the Defendant intended to do at any given time. And again, the element of criminal intent is an element of both of the crimes or all three of these crimes that are issued in this particular case. The State has to prove that beyond a reasonable doubt.

(T.340-341; R. 287-288)(emphasis added).

While the trial court's charge did not use the terms "intent to steal" as requested by Petitioner, the charge clearly encompassed that requirement by requiring the jury find Petitioner act with criminal intent and that he "took personal property from the person or presence of another person . . . [and] carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use." Accordingly, the trial court's jury charge was appropriate and sufficient and there was no prejudice to the Petitioner.

The affidavits¹ indicating the jurors would have ruled differently depending on the wording of the charge are irrelevant to a determination of whether the jury charge given was an accurate and complete statement of the law in South Carolina. (Juror Affidavits; R. 323). If the jurors were confused regarding the instruction given, more questions should have been asked. The jurors unanimously found Petitioner “took personal property from the person or presence of another person . . . [and] carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant’s own use.” They also found beyond a reasonable doubt that he intended those actions. Apodictically, the jurors found Petitioner guilty of the crime of armed robbery. Accordingly, the Court of Appeals correctly affirmed the trial court’s ruling, and this Court should deny the Petition for Writ of Certiorari.

¹ The State notes the juror affidavits should not be considered in reaching a decision regarding the issues presented, and should not have been considered by the trial court. Generally, juror testimony is inadmissible to impeach a jury verdict. State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995). “However, juror testimony or affidavits are admissible to prove an allegation of extraneous information or influence.” State v. Franklin, 341 S.C. 555, 560, 534 S.E.2d 716, 719 (Ct. App. 2000); see also, Rule 606(b), SCRE (testimony or affidavit of juror is admissible to demonstrate that outside prejudicial information was brought to jury’s attention or that outside influence was placed on any juror).” There is no extraneous influence involved in this case, the sole allegations relate to the jury charge and the failure to present certain information to the jury, not their receipt of information from a source external to the process. The State addresses the impact of the affidavits out of an abundance of caution.

II. The Court of Appeals correctly affirmed the trial court's denial of Petitioner's motion to require the State to include the minimum sentence as part of its closing on the law.

Petitioner contends the Court of Appeals erred in denying his motion to require the State to include the minimum sentence Petitioner faced as part of its closing on the law. The jury's responsibility is to determine guilt or innocence based on the facts provided, not consider sentencing ramifications. The affidavits demonstrate exactly why this information is not to be considered by the jury. Further, there is no basis to deviate from the general rule that the sentence Petitioner faced is not to be provided to the jury in order to ensure a fair trial.

"In South Carolina determining guilt or innocence is the duty of the jury, whereas sentencing is the duty of the court." State v. Galbreath, 359 S.C. 398, 406, 597 S.E.2d 845, 849 (Ct. App. 2004). "The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence." State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002). "The purpose of preventing disclosure of the potential sentence facing the defendant is that such evidence is irrelevant to the jury and could possibly prejudice the State's right to a fair trial." Id. at 331, 563 S.E.2d at 317 (citing Illinois v. Brewer, 615 N.E.2d 787, 790 (1993)). The Mizzell Court stated:

Generally, a judge may prevent the introduction of evidence which informs the jury of the possible sentence defendants may receive if convicted because it is either irrelevant or substantially prejudicial. See Illinois v. Brewer, *supra*; State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) (construing Rule 403, SCRE, to allow a judge to exclude relevant evidence if the danger of unfair prejudice

substantially outweighs its probative value); Rule 402, SCRE (“Evidence which is not relevant is not admissible.”).

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318.

The trial court properly declined to require the minimum mandatory sentence be provided to the jurors for their consideration. The jurors responsibility is to determine whether the State proved Petitioner’s guilt of a crime beyond a reasonable doubt. It is not their responsibility to determine what punishment he deserves, or adjust their decision of guilt or innocence based on the sentence he could receive.

Petitioner contends the general rule is “out-dated” and fails “to recognize the changes to our criminal justice system of the last several decades. Namely, this general rule ignored the fact that when an offense carries a mandatory-minimum, the jury is in fact deciding sentencing.” (App. Br. 16). In actuality, the jury is still not deciding sentencing and the judge retains discretion within a specified range, just as he does with every conviction. Further, the cases which discuss the general rule were well after numerous statutes established mandatory minimums for sentencing purposes and so are not “out-dated” or ignorant of the existence of the mandatory minimum sentence. For example, the Mizzell decision in 2002 explained the general rule that the jury should not receive sentencing information in its discussion of a first-degree burglary case. The statutory punishment for first-degree burglary contained a mandatory minimum sentence of fifteen years since 1995.²

²Additionally, Mizzell references State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991) as implicitly adopting the general rule that the jury should not receive sentencing information. Brown involved trafficking in cocaine, which the Court specifically noted required a mandatory minimum sentence of twenty-five years imprisonment. Brown, 303 S.C. at 171, 399 S.E.2d at 594.

As a result, Petitioner's argument that the general rule is "out-dated" or not relevant to a case involving a punishment by a mandatory minimum sentence is entirely without merit.

The affidavits³ in this case belie Petitioner's reasoning and support the conclusion of the Supreme Court in Mizzell that the jury should not know the sentencing implications. In this case, the jurors clearly found Petitioner guilty of armed robbery. They did not find it necessary to convict only on the lesser included offense of common law robbery, but found the State proved beyond a reasonable doubt that he committed the offense of armed robbery. The fact they state in their affidavits that they would find different regarding his guilt of that offense if they knew the sentencing implications is all the proof necessary to support the long-standing requirement the jury not be told the sentencing implications. (Juror Affidavits; R. 323). Accordingly, the Court of Appeals correctly affirmed the trial court's decision refusing to provide the jurors with the mandatory minimum sentence, and this Court should deny the Petition for Writ of Certiorari.

³Again, the State does not believe the Affidavits should be considered but out of an abundance of caution will address their impact on the issue before the Court.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari to the Court of Appeals should be denied.

Respectfully submitted,

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October 22, 2012

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PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Return to Petition for Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 22nd day of October, 2012.



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