

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Oct 27 2023

S.C. SUPREME COURT

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COREY JERMAINE BROWN,

PETITIONER.

APPELLATE CASE NO. 2021-000941

RETURN TO PETITION FOR REHEARING

This Court’s Opinion is correct and needs no modification. The State’s petition for rehearing addresses two points from the Opinion but is notably silent to a third and critical part of this Court’s reasoning—the standard of review. This Court began its legal analysis by stating, “Initially, we note that it is not possible to ignore the trial judge’s shock at the discovery of the State’s failure to disclose their offer and negotiations with Evans.” State v. Brown, ___ S.C. ___, ___ S.E.2d ___, Op. No. 28179, at p. 5 (Sept. 29, 2023). The standard of review for the grant or denial of a new trial is highly deferential, a settled proposition for which this Court cited its decision in State v. Mercer, 381 S.C. 149, 672 S.E.2d 556 (2009). Mercer emphasized “the gatekeeping role of the trial court in making a credibility assessment.” Mercer at 166-67, 672 S.E.2d at 565. “On review, we may not make our own findings of fact. The deferential standard

of review constrains us to affirm the trial court if reasonably supported by the evidence.” Id. Simply put, this Court adhered to the standard of review and the Court of Appeals did not.

The State acknowledges that the lack of physical evidence was important to the outcome, but did not contradict the Opinion’s correct finding that no physical evidence existed. State’s Pet. Rehearing at 1, 4. The nonexistence of physical evidence increased the importance of Evans’ credibility. The State goes to great lengths to show that Evans’ credibility was impeached at trial, but has no answer for the bigger picture of the centrality of the credibility question as recognized in the Opinion.

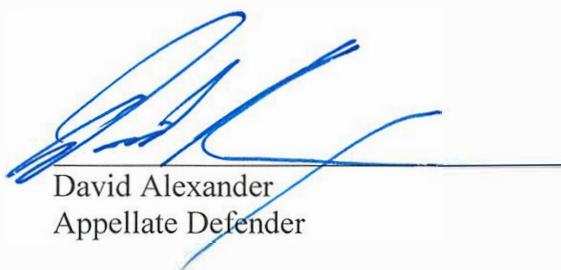
The State argues that the deal did not need to be disclosed. The Opinion does not ignore reality, as the State’s petition asks when it argues that the breached agreement “had *nothing* to do with an agreement to testify.” State’s Pet. Rehearing at 2. This Court recognized the difference between a breached agreement with a veteran of the criminal process who knew he could do better after testifying versus the picture the State paints of mere hopes existing in a vacuum. The Opinion recognizes the importance of the effect of the breached agreement on Evans and the need for the jury to see and evaluate that bias.

The State asks this Court to reevaluate its decision because of remarks made by the solicitor during his closing argument about his decision-making power to offer deals to Evans. State’s Pet. Rehearing at 5. “Arguments made by counsel are not evidence.” S.C. Dep’t Transp. V. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003). Judge Griffith properly charged the jury that they were only to consider the testimony and exhibits as evidence at the end of the case. R. 451, l. 5 – 8. The solicitor’s comments are a legally insufficient basis on which to grant rehearing.

The standard of review also undercuts the State’s arguments about the success of the impeachment of Evans. This Court properly recognized the significance of a breached agreement

coupled with Evans' knowledge that he could still do better. The State's argument that Evans had mere hopes for leniency are misplaced. Because of the agreement the State made, Evans did not hope he could do better if he pleased the State-- he *knew* he could do better. This powerful incentive created a bias that was required to be disclosed and would have made a difference if it had been available to the defense.

Finally, the State offers no serious challenge to the legal reasoning and decisions relied upon by this Court. The State's petition, while couched in terms of materiality, is in reality a harmless error argument. In a case with no physical evidence—making credibility the central concern—and the State hiding its deal with the key witness, the existence of the deal was material. The State's petition should be denied.



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