

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Calhoun County

Honorable R. Kirk Griffin, Circuit Court Judge
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JERRY MCKNIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2023-001809
—————

PETITION FOR WRIT OF CERTIORARI
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RECEIVED

May 29 2024

S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR court err finding defense counsel was not ineffective for failure to object to inflammatory comments made by the solicitor during closing arguments?

STATEMENT

On January 5, 2015, a Calhoun County grand jury indicted petitioner for murder, kidnapping, and possession of a firearm by a person convicted of a violent crime. App. 959-66. Petitioner's case was called to trial on March 2, 2015, before the Honorable Maité Murphy and a jury. App. 1-836. Petitioner was tried with his brother and co-defendant Bryant McKnight. App. 1. Petitioner was represented by Mark Leiendecker. Bryant was represented by Martin Banks. David Pascoe, Don Sorenson, and Kyle Ward prosecuted for the state. App. 1.

On March 6, the jury found petitioner guilty as indicted. App. 826, ll. 7-15. Judge Murphy sentenced petitioner to concurrent terms of life imprisonment for murder, thirty years' imprisonment for kidnapping, and five years' imprisonment for possession of a weapon. App. 834, l. 24-835, l. 9; 961-67. The Court of Appeals affirmed petitioner's convictions and sentences in an unpublished opinion. *State v. McKnight*, 2017-UP406 (Ct. App. filed Oct. 25, 2017).

Thereafter, petitioner filed an application for PCR. App. 837-61. An evidentiary hearing was held on September 7, 2022, before the Honorable R. Kirk Griffin. App. 876-937. Petitioner was represented by Clarissa Joyner and the state was represented by Lauren Mims. App. 876.

On October 13, 2023, Judge Griffin signed an order vacating petitioner's sentence for kidnapping but dismissing all other allegations.¹ App. 938-58. As to petitioner's kidnapping sentence the PCR court found petitioner was entitled to relief for defense counsel's failure to object to the trial court's thirty-year sentence for kidnapping. The court vacated petitioner's

¹ The state conceded this allegation at the evidentiary hearing and this holding is not challenged on appeal. App. 931, l. 23-932, l. 2.

sentence for kidnapping pursuant to Section 16-3-910 of the South Carolina Code² and *State v. Vick*.³ App. 952-53.

The PCR court found defense counsel was not ineffective for failing to object to inflammatory statements made during the solicitor's closing. The court found credible counsel's testimony that he did not find the comments made by the solicitor objectionable. The court did not find the solicitor's comments inflamed the passions or prejudices of the jury but found the statements were supported by the evidence and testimony presented at trial. The court further found petitioner failed to show counsel's failure to object "so infected the trial with unfairness as to result in a denial of due process." App. 954-57.

² Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20. S.C. Code Ann. § 16-3-910

³ 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009).

ARGUMENT

The PCR court erred finding defense counsel was not ineffective for failure to object to inflammatory comments made by the solicitor during closing arguments.

Relevant facts

During the state's closing the solicitor made the following remarks:

[A] year ago, [decedent's mother] set out coming over to St. Matthews, Calhoun County, where we are today, trying to find some answers, trying to find her daughter. Tragically, ultimately kind of searching into trying to find some justice.

...

[U]ltimately, ladies and gentlemen, your voice is going to be the strongest, loudest voice in this courtroom. What I ask of you, the people of Calhoun County, the people of the State of South Carolina, is I ask you to come back with a voice that's loud and clear, a voice that tells Jerry McKnight and Bryant McKnight that they didn't get away with murder.

Prove them wrong. Find them guilty of the brutal, cold, malicious killing of 17-year-old [decedent]. Prove them wrong, find them guilty of kidnapping her, and in Jerry's case, in possessing that weapon that he was not allowed to have.

App. 806, ll. 7-18.

At the evidentiary hearing defense counsel admitted he failed to object but explained that he did not find the solicitor's remarks during closing to be inflammatory. App. 909, l. 5-910, l. 14.

Discussion

The PCR court erred finding the solicitor's remarks to the jury during closing argument were not inflammatory and counsel was not deficient for failing to object. The PCR court erred finding the comments made by the solicitor during closing did not prejudice petitioner because the evidence against petitioner was overwhelming.

The state's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981). The solicitor violated this well-established rule throughout his lengthy closing. The sole purpose of the solicitor's repetitious statements was to arouse the emotions of the jury and distract from the obvious credibility problems of many of the state's witnesses.

At trial, no physical evidence tied petitioner to the crime. Jonathan McKnight and Derrick Sumter were the sole witnesses that testified petitioner was involved in the death of decedent. App. 213-72; 327-76. Both were law enforcements initial suspects in the crime and both men were, at a minimum, involved in the coverup. McKnight was charged with obstruction of justice and accessory after the fact in connection with this case. App. 231, ll. 15-17. McKnight denied the state made any deal with him in exchange for his testimony against petitioner. App. 232, ll. 3-7. Sumter was charged with accessory after the fact of murder but denied the state made any deal with him in exchange for his testimony against petitioner. App. 350, l. 12-351, l. 8. The inflammatory statements made during closing greatly prejudiced petitioner in a trial where the evidence against petitioner, two witnesses with every reason to lie, was far from overwhelming.

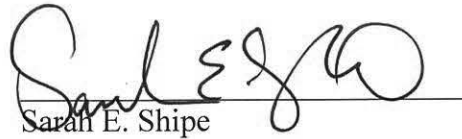
Improper comments do not automatically require reversal if they are not prejudicial to the defendant. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). On appeal, the court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there was overwhelming evidence of the defendant's guilt. *Id.* The appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974); *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760, cert. denied, 522 U.S. 853 (1997).

Here, trial counsel was deficient for failing to object to the solicitor's inflammatory statements. The solicitor's remarks made during closing statements asked the jury to decide based on emotion and their position as citizens of Calhoun County rather than the evidence presented.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

A handwritten signature in black ink, appearing to read "Sarah E. Shipe", written over a horizontal line.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of May, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Calhoun County

Honorable R. Kirk Griffin, Circuit Court Judge

JERRY MCKNIGHT,

PETITIONER,

V.

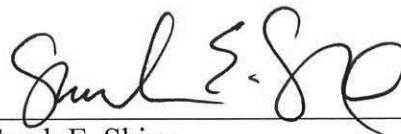
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2023-001809

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and Appendix in the above-referenced case has been served upon Bryan Hall, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 29th day of May, 2024.



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Appellate Defender

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