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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Georgetown County
The Honorable Kristi Curtis, Circuit Court Judge
Appellate Case No. 2022-001326

STANLEY MOULTRIE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

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RESPONDENT'S ISSUE PRESENTED

1. The PCR Court properly found that counsel was not ineffective for failing to object to the prosecutor's alleged vouching for the victim's credibility.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Id. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

STATEMENT OF THE CASE

A Georgetown County Grand Jury indicted Petitioner for kidnapping and armed robbery. On August 22-24, 2016, Petitioner proceeded to jury trial before the Honorable D. Craig Brown. Petitioner was convicted of armed robbery and acquitted of kidnapping. (App. 272). Based on his prior record, the trial court sentenced him to life without the possibility of parole (LWOP). (App. 277). Petitioner filed a direct appeal, arguing the trial court erred in denying his motion for a mental health evaluation. (App. 307-321). The Court of Appeals affirmed in an unpublished opinion pursuant to Rule 220(b), SCACR. State v. Moultrie, 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019).

Petitioner filed a *pro se* application for post-conviction relief (PCR) April 17, 2019, and after retaining counsel, he filed an amended application for PCR November 30, 2020 and a second amended application for PCR on March 10, 2021. (App. 351-397). Petitioner proceeded to an evidentiary hearing before the Honorable William H. Seals, Jr. on June 23, 2021, who ultimately denied and dismissed the application with prejudice by order dated July 31, 2021. (App. 467-490). Petitioner did not appeal, but after a hearing before the Honorable Kristi R. Curtis., was granted a belated appeal September 22, 2022, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (App. 505-510)

RELEVANT FACTS

On January 20, 2015, the victim, Joyce Messinger, was working as an assistant manager at Shoe Show in Georgetown, when Petitioner entered the store shortly after opening. (App. 124). Applicant was wearing a blue jumpsuit, blue cap, and round rimmed glasses. (App. 130). Applicant approached Messinger asking if she could check if the store had a size 13 shoe. (App. 124). There was no size 13 in the shoe requested, so Messinger grabbed the phone to call the nearby Conway store to see if they had the shoes in stock. (App. 124). When she turned around, Petitioner grabbed her neck and told her to open the safe, saying he used to work there and knew they had one. (App. 125). When she informed him there was no safe, Petitioner told her to empty the registers and hand him the money, while he continued to hold the knife against her neck. (App. 125). Petitioner sat Messinger on a bench in front of the employee door. (App. 125). After checking that Petitioner had left the scene, Messinger walked slowly to the front of the store, locked the doors, and called 911. (App. 126). Messinger identified Petitioner in a photo lineup about 10 days later. (App. 132). Messinger testified at trial she did not feel free to leave while Applicant had a knife and a grip on her. (App. 127-128). Petitioner was arrested and charged with armed robbery and kidnapping.

Ronald Walker, Asset Protection Associate at Walmart, was called to testify. (App. 140). A video from January 20, 2015, was admitted into evidence showing a vehicle entering the parking lot, stopping in a spot, parking for twenty to thirty minutes before someone exited and walked into Shoe Show and then exiting the store minutes later and driving away. (App. 143). Beyond depicting the individual in the video walking with a limp, the video quality was too poor to tell exactly who the individual was. (App. 143). Sergeant Jason Ward from Georgetown Police Department testified they were able to get a tag on the car from the surveillance video and photos and the vehicle was registered to Stanley Moultrie, Petitioner. (App. 161).

Officers obtained a search warrant for Petitioner's residence and found a car matching the tag and description in the video, size 13 shoes, glasses, and a blue jumpsuit. (App. 165-166). The State also offered cell phone records indicating that Petitioner was in the vicinity of the Shoe Show during the time of the robbery. (App. 216). The jury found Petitioner guilty of armed robbery, but acquitted him of the kidnapping charge.

ARGUMENT

I. The PCR Court properly found that Counsel was not ineffective for failure to object to burden shifting by the Court

Petitioner argues that the PCR court erred in finding the solicitor's statements vouching for the state witness were improper. To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. Fortune v. State, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019).

"It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." United States v. Francisco, 35 F.3d 116, 120 (4th Cir. 1994); see also State v. New, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony."). A prosecutor should "prosecute with earnestness and vigor" and "may strike hard blows, [but] is not at liberty to strike foul ones." Berger v. United States, 295 U.S. 78, 88 (1935). "If a Solicitor's closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs." New, 338 S.C. at 319, 526 S.E.2d at 240. "On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury's passions or prejudice." Id. "[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are

apt to carry much weight against the accused when they should properly carry none.” Berger at 88.

“Improper comments do not automatically require reversal if they are not prejudicial to the defendant.” Id., 428 S.C. at 550, 837 S.E.2d at 40 (quoting Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor’s argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. Id.

Here, nothing the solicitor stated rose beyond the level of fair inferences drawn from her testimony. Though the solicitor stated that the victim’s emotions on the stand were genuine, he made clear it was the jury’s decision concerning the veracity of her statements and her credibility as a witness and to use the testimony, in conjunction with other evidence presented, when determining whether Petitioner was guilty. (App. 233-37). Though the solicitor stated he personally found her credible, he acknowledged it was the jury’s determination to make and made it clear that it was none other than a personal opinion. The statements did not appeal to personal biases of the jury, inflame their passions, or make improper insinuations, suggestions, or make assertions of personal knowledge. Accordingly, the statements made were not improper and, therefore, Counsel was not ineffective for failure to object to the statements.

Further, even if the statements were improper, Petitioner was not prejudiced. Ordinarily, the existence of overwhelming evidence does not automatically preclude a finding of prejudice, as an element of ineffective assistance of counsel claim. Smalls v. State, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). “For the evidence to be overwhelming such that it categorically precludes a finding of prejudice...the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong

that the Strickland standard of ‘a reasonable probability... the factfinder would have had a reasonable doubt’ can be met.” Id. at 191, 810 S.E.2d 836 at 845. Here, Victim gave a statement to what Petitioner was wearing and those clothes were found at Petitioner’s home, Petitioner was identified in a lineup, Petitioner’s car was seen on surveillance video in the parking lot where the incident occurred as well as Petitioner’s cell phone records placed him in the vicinity of the incident. As stated above, the statements made were not improper and the evidence against Petitioner in the case was overwhelming and, thus, any improper statements made were not prejudicial to Petitioner. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). See also Darden v. Wainwright, 477 U.S. 168, 181 (1986). (holding that the relevant question is not whether the prosecutors’ comments were improper but whether they “so infected the trial with unfairness as to make the resulting conviction a denial of due process.”) Consequently, Counsel was not ineffective because, even if this Court found Counsel deficient, Petitioner was not prejudiced by the deficiency. Therefore, the post-conviction relief judge’s order denying Petitioner’s application for post-conviction relief should be affirmed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted the judgment of the lower court be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Brief of Respondent on Elizabeth Franklin Best, Esquire, counsel of record for the Petitioner by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 30th day of September 2024.



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Attachments: MOULTRIE Stanley - BOR.pdf

Good Morning Ms. Franklin-Best,

Attached please find a Brief of Respondent in Stanley Moultrie v. State of South Carolina (2022-001326). This Brief will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

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