

RECEIVED

Nov 06 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AKEEM DAVON HAMPTON,

APPELLANT

APPELLATE CASE NO. 2023-001726

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial court erred in denying Appellant’s motion for a mistrial following defense counsel’s objection to the solicitor’s comments during rebuttal closing argument where the solicitor improperly commented on Appellant’s right to remain silent, impermissibly shifting the burden of proof to Appellant.4

CONCLUSION.....9

PETITION TO BE RELIEVED AS COUNSEL10

TABLE OF AUTHORITIES

South Carolina Cases

Edmond v. State, 341 S.C. 340, 534 S.E.2d 682 (2000)..... 6, 7

Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002)..... 7

Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998) 3, 7

State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996)..... 3

State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997)..... 7

State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007)..... 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for a mistrial following defense counsel's objection to the solicitor's comments during rebuttal closing argument where the solicitor improperly commented on Appellant's right to remain silent, impermissibly shifting the burden of proof to Appellant?

STATEMENT OF THE CASE

In March 2022, Appellant was indicted by a Lexington County grand jury for one count of financial identity fraud. R. 192-193. The State, represented by Kyle E. Smith and Whitney Y. Taylor, called the case to trial on October 23, 2023, before the Honorable Maite Murphy and a jury. Appellant was represented by Justin M. Kata. R. 1. Appellant was found guilty as indicted. R. 177, ll. 19-25. Judge Murphy sentenced Appellant to ten years of incarceration. R. 189, l. 23-R. 190, l. 1; R. 194-195.

STANDARD OF REVIEW

“The trial court has broad discretion when dealing with the propriety of the solicitor’s argument, including the question of whether to grant a defendant’s mistrial motion. The trial court’s discretion will not be overturned absent a showing of an abuse of discretion amounting to an error of law that prejudices the defendant.” State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) (internal citations omitted). “On appeal, the appellate 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 is overwhelming evidence of the defendant’s guilt.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

ARGUMENT

The trial court erred in denying Appellant's motion for a mistrial following defense counsel's objection to the solicitor's comments during rebuttal closing argument where the solicitor improperly commented on Appellant's right to remain silent, impermissibly shifting the burden of proof to Appellant.

Relevant Facts

On September 13, 2021, John Vitters placed a check in the mailbox to pay his estimated quarterly taxes. The check was made out to the United States Treasury for \$10,000 and included Vitters' social security number in the memo line. R. 49, l. 17-R. 51, l. 23. Vitters had previously paid his quarterly taxes through the mail. He expected the check to clear three days after he placed it in the mail. R. 53, ll. 1-7. The following morning Vitters received an email from his bank informing him that the check had been deposited. Vitters found this suspicious. He obtained a copy of the deposited check from his online account and discovered the information on the check had been altered. The check for \$10,000 was now made out to Akeem Davon Hampton and the memo line referenced a Dodge Challenger. R. 53, ll. 8-16; R. 55, ll. 10-18.

Investigator Joseph Andaloro with the Lexington County Sheriff's Department spoke with Vitters and obtained the online copy of the check. R. 68, l. 7-R. 69, l. 21. Andaloro also obtained the records of Appellant's bank account. Those records showed a deposit into Appellant's account of \$10,000 on September 13, 2021. R. 74, l. 13-R. 75, l. 15. Andaloro spoke with Appellant regarding the incident. Appellant stated that he had gotten the check about six months prior to depositing it from a guy named Johnny that he had been "helping out." R. 76, ll. 15-20. Further investigation showed Appellant transferred a total of \$9,846 from his account to the account of Somalia Hampton – his sister. R. 89, ll. 7-21. Investigator Brian

Burrell also spoke with Appellant. According to Burrell, Appellant stated that the person who gave him the check was a man he met on a dating site for gay men. He stated the man reported the check as fraudulent because “his wife found out.” R. 90, ll. 6-16. Appellant filed an online incident report with the Richland County Sheriff’s Department on November 10, 2021, alleging he had been the victim of a financial scam or fraud. Investigator Kyle Kovalchek attempted to contact Appellant regarding the report but was unsuccessful. Eventually, the case was closed. R. 104, l. 25-R. 111, l. 18.

Appellant chose not to testify at trial. R. 123, ll. 9-16. During the State’s rebuttal closing argument the solicitor stated:

Tell, tell me what's more likely, ladies and gentlemen. That defendant managed to run into a fellow posing as John Vitters, who just happened around 1:30 that afternoon to grab a check out of his mailbox, make all the necessary alterations to the check, and then hand it to the defendant, **or that defendant is not telling you the truth, that Ms. Labrador is not telling you the truth?**

And we brought it up. We talked about it. [The] Defendant was given a chance to tell his side of the story to police. His sides of the story are inconsistent; they're incomplete. R. 159, ll. 1-11 (emphasis added).

Counsel Kata promptly objected to the comments as burden shifting. The trial court sustained the objection and admonished the solicitor to not “comment on it.” R. 159, ll. 12-16. At the close of the solicitor’s rebuttal argument, Counsel Kata made a motion for a mistrial based on burden shifting. He argued that the solicitor’s comment directly implicated Appellant’s right to remain silent. The State argued that Counsel Kata had brought up Appellant’s attempts to contact police during his closing argument and that the evidence in the case was that Appellant had initiated all contact with law enforcement R. 160, l. 15-R. 161, l. 14.

The trial court ruled that the comments of the solicitor did not warrant a mistrial stating,

[B]ecause of the fact that it was brought out by both sides the defendant contacted law enforcement. He did have an opportunity. During your cross-

examination, you asked -- you asked the officers as far as their responses and if they spoke to him or not. So, I don't believe that would warrant a mistrial at this point. R. 161, l. 15-R. 162, l. 13.

The trial court determined a curative instruction, along with the standard jury charge, would be sufficient to cure any potential prejudice from the solicitor's argument. The trial court charged the jury,

Ladies and gentlemen of the jury, during the state's closing argument, the solicitor stated the defendant had the opportunity to give statements to law enforcement. I charge you that it is an improper argument as the defendant has the absolute right to remain silent. The state has the burden of proof and that comment by the state was improper. You are to regard that statement in its entirety. R. 163, l. 5-R. 164, l. 24.

After a short bench conference, the trial court clarified that it had intended to say, "you are to disregard the statement in its entirety." R. 165, ll. 1-14.

Discussion

"While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done." State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (cleaned up). "The solicitor's closing argument must, of course, be based upon this principle." Id. Our courts have held that, "[i]t is improper for the State to refer to or comment upon a defendant's exercise of a constitutional right." Edmond v. State, 341 S.C. 340, 345, 534 S.E.2d 682, 685 (2000) (cleaned up). "Such comments may not be made either directly or indirectly." Id.

"In particular, the State may neither comment upon nor present evidence at trial of a defendant's decision to exercise his right to remain silent or be represented by an attorney." Id. The prohibition on this practice is "rooted in due process and the belief that justice is best served when a trial is fundamentally fair." Id. "The obvious purpose is to try to prevent jurors from improperly inferring the accused is guilty simply because he exercised rights guaranteed him by

the state and federal constitutions. Such an inference is constitutionally impermissible because the burden at all times remains upon the State to prove beyond a reasonable doubt every element of a crime with which the accused is charged.” Id.

“On appeal, the appellate 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 is overwhelming evidence of the defendant's guilt.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). “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.” Id.; see State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (“A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.”).

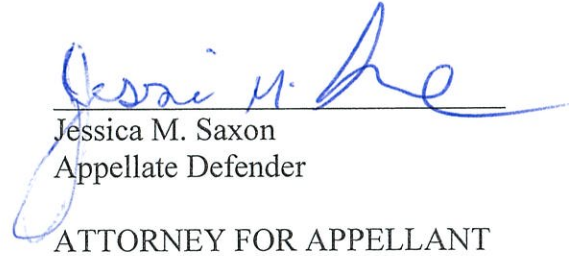
The solicitor's closing argument commenting upon Appellant's right to remain silent was highly improper. That impropriety was highlighted by the admonishment from the trial court after Counsel Kata's objection, as well as in the language of the curative instruction given by the trial court. Despite the highly improper nature of the solicitor's argument, the trial court denied Appellant's motion for a mistrial because both sides had commented on Appellant's statements and contact with police. Commenting on admitted statements the defendant has made and challenging the credibility of those statements is legitimate closing argument material. What was

not proper was challenging the invocation of a defendant's constitutionally protected right to remain silent.

The trial court attempted to cure the impropriety and prejudice of the solicitor's closing argument by giving a curative instruction. While the curative instruction was clear, it did not overcome the prejudice suffered by the direct comment on Appellant's exercise of his constitutional right to remain silent. Appellant, through his statements to law enforcement and the testimony of the defense witness, asserted that he had been the victim of a scam as well. The solicitor undermined this defense by asking the jury to question why Appellant had not told the story, in detail, before trial. The solicitor's comment inferred that Appellant was being untruthful in his defense. The only way to un-ring that bell would have been to grant a mistrial. The trial court erred in refusing to declare a mistrial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court reverse his conviction and sentence and remand the case back to the Court of General Sessions of Lexington County for a new trial.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of November, 2024.

RECEIVED

Nov 06 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AKEEM DAVON HAMPTON,

APPELLANT

APPELLATE CASE NO. 2023-001726

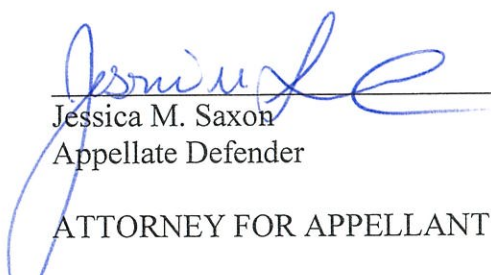
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Akeem Davon Hampton states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Maite Murphy, which was held on October 23, 25-26, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, she asks the Court to relieve her as counsel for Akeem Davon Hampton.

Respectfully Submitted,


Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of November, 2024.

RECEIVED

Nov 06 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AKEEM DAVON HAMPTON,

APPELLANT

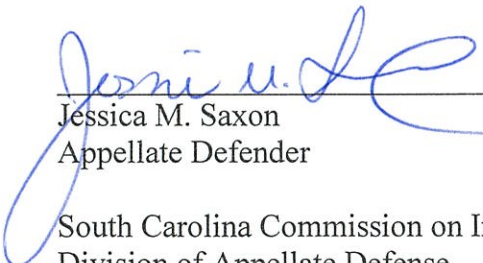
APPELLATE CASE NO. 2023-001726

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment: 2022GS3200773
- (2) Trial Transcript dated October 23, 25, 26, 2023
- (3) Sentencing Sheet dated October 26, 2023

I certify that this designation contains no matter which is irrelevant to this appeal.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 6th day of November, 2024.

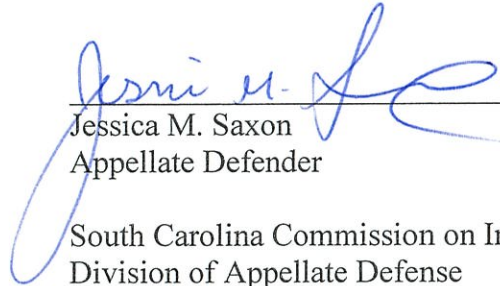
RECEIVED

Nov 06 2024

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 6th day of November, 2024.

RECEIVED

Nov 06 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

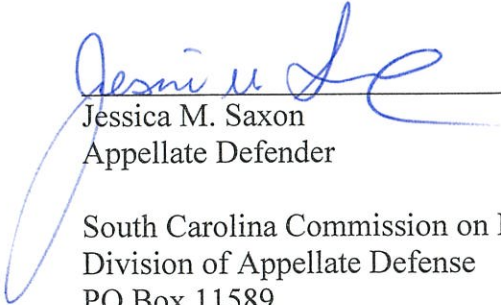
AKEEM DAVON HAMPTON,

APPELLANT

APPELLATE CASE NO. 2023-001726

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Akeem Davon Hampton, #353416, at Tyger River Correctional Center, 100-200 Prison Road, Enoree, SC 29335, this 6th day of November, 2024.


Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT