STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN RAY SPEAGLE,

APPELLANT

APPELLATE CASE NO. 2025-000252

ANDERS BRIEF OF APPELLANT

GARY H JOHNSON
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 AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in refusing to grant appellant a new trial considering the solicitor's improper closing argument that told the jury they were to seek the truth thereby improperly subverting the presumption of innocence and burden of proof required for a criminal conviction?

STATEMENT OF THE CASE

Appellant was originally indicted for possession of methamphetamine with a superseding indictment being true billed by a Fairfield County grand jury for possession of a controlled substance. R. 194-197; R. 63, ll. 4 – 10. Appellant was tried before the Honorable Brian Gibbons and a jury on January 27 – 28, 2025. R. 1. Julie Hall represented the state and Kay Boulware appeared on behalf of appellant. R. 1. The jury convicted appellant as indicted and the trial court sentenced appellant to a one year incarceration, suspended upon service of six months, with a one year period of probation. R. 192, ll. 5 – 13.

This appeal follows.

STANDARD OF REVIEW

"On appeal, an appellate court will review the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial [court]'s instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." State v. Rudd, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003). The test of granting a new trial for alleged improper closing argument is whether the solicitor's comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Holcomb, 426 S.C. 557, 565–66, 827 S.E.2d 367, 372 (Ct. App. 2019) (quoting Darden v. Wainwright, 477 U.S. 168, 169 (1986)).

ARGUMENT

The trial court erred in refusing to grant appellant a new trial considering the solicitor's improper closing argument that told the jury they were to seek the truth thereby improperly subverting the presumption of innocence and burden of proof required for a criminal conviction.

A. How the matter was raised at trial.

During closing argument, the solicitor told the jury:

> And we're not here trying him for meth. We're here trying him for the Klonopin which is what he actually possessed. And what he -- and I want -- and once you've considered all of the evidence, again, the State just asks that you render a verdict that does speak the truth and we would submit that verdict is guilty.

R. 174, ll. 6 – 12.

Counsel for appellant immediately approached the trial court and a bench conference was held. R. 174, ll. 14 – 15. The trial continued, with both appellant's closing argument and the jury instructions before a record was made of the motion for a mistrial being acknowledged and denied by the trial court:

> MS. BOULWARE: Well, judge, yes. So the objection I had during the solicitor's closing was it was ended with the phrase "speak the truth" and I think the recent case law in South Carolina has held that, that, that is not allowable. And I think my remedy, I'd have to go look at the most recent case, but I think my remedy again is only, well, again, to ask for a mistrial because that was said in front of the jury.
>
> THE COURT: Well, I believe that case held that the judge's instruction talking about true and a true verdict was an unnecessary comment on the, on the evidence and it bolstered the evidence that, that was reason for the finding. But I respectfully deny your motion for mistrial. You will know as you follow along, there were several areas that had true or truth in my jury instruction for whatever reason that I was reading some old ones. But I've switched that and I, and I

> didn't say anything about true or truth. I talked just about verdict and credibility. So your motion is, respectfully, denied. I think -- I think that case law is only dealing with the judge's instruction. Even though, I, you know, one of the --what that case law also did not discuss was in every jury trial I've ever done in the oath that the clerk of court gives to a trial jury they say in a true verdict you shall render, okay. Add nobody's ever complained about that and that's not part of that case. But that's the very oath that every clerk of court in every county in South Carolina gives a trial jury. And so I mean, I just made a good record of that so we can go from there.

R. 187, l. 3 – 188, l. 9.

B. How the trial court erred.

In State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018), our Supreme Court warned of the dangers of conveying the concept that a verdict speaks the truth as a form of subverting the presumption of innocence and the state's burden of proof.

> We instruct trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State's burden of proof in a criminal case. Such language includes, but is not limited to, any language suggesting to the jury that its task is to "search for the truth" or to find "true facts," or that the jury should render a "just verdict."

Id., 423 S.C. at 46, 813 S.E.2d at 512.

The same logic and rationale hold true regarding statements by the solicitor during closing. This inappropriate language improperly lessens the burden of proof required for conviction and subverts the presumption of innocence.

Here, the solicitor improperly invoked the same improper "speak the truth" language prohibited in Beaty. This language has been deemed inappropriate even at the beginning of a trial, contrary to the trial court's response to appellant's motion for a mistrial. *See* State v. Patterson, 425 S.C. 500, 512, 823 S.E.2d 217, 224 (Ct. App. 2019) ("First, the trial court's improper comments came at the beginning of trial rather than during the charge on the State's

burden of proof at the end, which, we believe, is when such a statement would have the most prejudicial effect.").

Since Beaty was decided, the problems associated with this type of argument have been noted on several occasions, and the solicitor should have been aware of the dangers imposed by resorting to such an argument. *See* State v. Ostrowski, 435 S.C. 364, 400, 867 S.E.2d 269, 287 (Ct. App. 2021) ("Our supreme court has urged judges to avoid suggesting to jurors at any point during a trial that they should embark on a search for truth rather than basing their decision solely on the evidence and their inferences from that evidence."); Patterson, 425 S.C. 500, 823 S.E.2d 217. The trial court erred in determining the solicitor's argument did not infect appellant's trial with unfairness requiring the granting of a mistrial and new trial as argued below.

C. Prejudice.

The state's case was based upon constructive possession of a controlled substance. Officer Paul Melton testified that he knew appellant had a family court bench warrant prior to appellant's traffic stop. R. 42, l. 20 – 43, l. 7. Based upon prior knowledge of the family court bench warrant and due to an allegedly defective tail light, Melton stopped appellant's vehicle. R. 45, ll. 23 – 25. Melton described his search of the vehicle:

> Okay. I was -- in the vehicle the back driver side floor board I found some plastic wrapping, at that time I unwrapped it, I found three Clonazepam pills, there inside that bag, three and a half pills. That was what it was.

R. 84, ll. 20 – 24.[1]

[1] Trial counsel moved to suppress the seized material based upon an argument that the family court bench warrant did not support law enforcement stopping the vehicle under Terry v. Ohio, 392 U.S. 1 (1968) since the bench warrant was based upon a civil payment dispute rather than a

In defense, counsel for appellant presented the testimony of Kenneth McDonald. McDonald had a prescription for Clonazepam and had known appellant for a number of years. R. 141, l. 9 – 142, l. 9. McDonald used baggies to hold his medication during the workday rather than trust a pill bottle. R. 142, ll. 12 – 21. McDonald related that the bag fell out of his pocket on the day appellant was arrested. R. 142, l. 12 – 143, l. 13.

The jury was presented with two distinct possibilities regarding the controlled substance found in the rear of appellant's vehicle. Either appellant was constructively in possession or the substance belonged to McDonald who had a valid prescription. As such, the case depended on credibility. A case that depends on the credibility of the witnesses does not lend itself to a finding of harmless error. *See* State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) (holding the state's reliance on circumstantial evidence and credibility of witnesses negated a finding of harmless error). In judging prejudice,

> for the evidence of guilt to be 'overwhelming' such that it categorically precludes a finding of prejudice—as we found it did in *Rosemond* and *Harris*—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' cannot possibly be met.

Smalls v. State, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018) (internal citations omitted). No such overwhelming evidence of guilt is present to overcome the prejudicial impact of the improper closing argument of the solicitor.

---

criminal charge. R. 53, l. 23 – 55, l. 6. The trial court denied the motion, finding a bench warrant sufficient cause to detain and then arrest appellant. R. 60, ll. 3 – 6.

CONCLUSION

The trial court erred in failing to grant appellant's motion for a new trial due to the improper closing argument of the state. This Court should reverse appellant's conviction and remand this matter to the Fairfield County Court of General Sessions for a new trial.

Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of August, 2025.

RECEIVED
Aug 06 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN RAY SPEAGLE,

APPELLANT

APPELLATE CASE NO. 2025-000252

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Justin Speagle states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Brian M. Gibbons, which was held on Jan 27-28, 2025, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Justin Speagle.

Respectfully Submitted,

Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of August, 2025.

RECEIVED
Aug 06 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN RAY SPEAGLE,

APPELLANT

APPELLATE CASE NO. 2025-000252

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(s):
(2) Trial Transcript dated January 27 – 28, 2025
(3) Sentence Sheet

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

Gary H Johnson
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 August, 2025.

RECEIVED
Aug 06 2025
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."

Gary H Johnson
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 August, 2025.

RECEIVED
Aug 06 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN RAY SPEAGLE,

APPELLANT

APPELLATE CASE NO. 2025-000252

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 Justin Speagle at 207 Autumn Run Cir, , Columbia, SC 29229, this 6th day of August, 2025.

Gary H Johnson
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