

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Jocelyn J. Newman, Circuit Court Judge

BRYAN JEFFREY ELLIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000761

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding trial counsel was effective when he neither objected to the solicitor's improper characterization of petitioner as a convicted sex offender nor moved for a mistrial or get an affirmative ruling acknowledging the solicitor's improper closing argument that appealed to the jury's passions and prejudices to convict rather than the evidence presented during trial?

STATEMENT

Petitioner was indicted by a Lexington County Grand Jury on June 5, 2017, for criminal sexual conduct with a minor in the first degree and on July 10, 2017, for criminal sexual conduct with a minor in the third degree. App. 686 - 690. His case was called to trial before the Honorable R. Knox McMahon and a jury, from July 10 through July 12, 2017. App. 1.

Suzanne Mayes and La'Jessica Stringfellow appeared on behalf of the state; David Mauldin represented Appellant. App. 1. The jury returned verdicts of guilty, and Judge McMahon sentenced Appellant to incarceration for life for criminal sexual conduct with a minor in the first degree, and incarceration for fifteen years for criminal sexual conduct with a minor in the third degree, with sentences to run consecutively. App. 485, ll. 12 - 20.

On direct appeal, the Court of Appeals affirmed the conviction in an unpublished opinion. *See State v. Ellis*, No. 2017-001558, 2019 WL 2723215 (S.C. Ct. App. June 26, 2019). Petitioner timely filed for post-conviction relief, asserting numerous grounds. App. 487 – 509. Ola Johnson appeared on petitioner's behalf and filed amended grounds for relief. App. 535, 538. An evidentiary hearing was held before the Honorable Jocelyn Newman on June 8, 2022. App. 540. Mr. Johnson represented petitioner and Taylor Smith appeared on behalf of the state. App. 541. Judge Newman filed an order denying relief on March 19, 2025. App. 625.

This petition for certiorari follows.

ARGUMENT

1. The PCR court erred in finding trial counsel was effective when he neither objected to the solicitor's improper characterization of petitioner as a convicted sex offender nor moved for a mistrial or get an affirmative ruling acknowledging the solicitor's improper closing argument that appealed to the jury's passions and prejudices to convict rather than the evidence presented during trial.

A. How the matter impacted trial.

During closing argument, the solicitor repeatedly sought to influence the jury to base its verdict on passion and prejudice rather than the evidence before them. This included improper comments on the petitioner's right to testify in his own defense and have a jury decide his fate:

He takes that stand and calls that child a liar. Of all his sins I submit that's right up there at the top. Everything he's done to her that action is just as bad as the crimes he committed against her soul and against her body to call that child a liar when it's taken everything she has to summon up the bravery not just to tell nana *but to then have to go tell strangers about it and to take that stand for you 12, 13, 14 strangers and this courtroom full of people she's never met and talk about the most shameful of experiences. He's stealing her innocence even now. Think about that as a price she's paid for justice and give it back to her.* It's what she deserves the most.

App. 435, l. 17 – 436, l. 4 (emphasis added).

The solicitor referred to petitioner during closing argument as a sex offender, with the clear implication that he was already convicted of prior bad acts of the same nature as those before the jury, despite acknowledging to the trial judge there was no such prior record of convictions. App. 302, ll. 5 – 7.

That's how a sex offender thinks and I submit to you it's something that can't be understood or rationalized by anybody in this courtroom but that is not the law. It is not our job to try to interpret what the twisted mind of a sex offender thinks or feels or how he operates.

App. 436, l. 22 – 437, l. 2.

He is everything he owns up to being right here in this confession. A sex offender is as bad as it gets.

App. 437, ll. 18 – 19.

He wanted to break down every barrier and inhibition that that child had to teach her from the youngest age possible that it was okay and that it was right so that she would do everything that he said and I submit to you that is only how a sex offender would think and would act.

App. 441, ll. 8 – 13.

Trial counsel failed to object to the continued painting of petitioner as a “sex offender” with all the inappropriate baggage that term carried before the jury. Emboldened, the solicitor further pushed the envelope by warning the jury to find petitioner guilty to protect other children, finally drawing an objection from trial counsel:

This is a sex offender and there's no other way around it. Let this be the last time that he hurts a child in this way. Let this be the last time he steals the innocence –

MR. MAULDIN: Objection, Your Honor.

MS. MAYES: -- of a child.

MR. MAULDIN: Appealing to passion and prejudice.

App. 446, ll. 15 – 21.

However, the trial court never informed the jury that the objection was sustained and that the solicitor's argument was improper. Rather, the trial court admonished the jury to remember that their “verdict will not be based on passion and prejudice, biased or any other motive not in

evidence or emotion not in evidence in the case. It must be based on the facts and the reasonable inferences therefrom. Thank you, Mr. Mauldin. Thank you, Solicitor. You may continue.” App. 446, l. 23 – 447, l. 3.

Without the admonition, the solicitor continued to inject improper motives for conviction before the jury:

MS. MAYES: Yes, sir, Your Honor.

I submit to you this must be the last time. The correct verdict in this case –

MR. MAULDIN: Objection, Your Honor.

App. 447, ll. 4 – 7. Once again, the trial court did not specifically rule on trial counsel’s objection, providing another general instruction to the jury that its “verdict must be based on the evidence, the reasonable inferences drawn therefrom and the law as I tell you the law is.” App. 447, ll. 8 – 11.

The solicitor, in reply, continued to improperly imply petitioner was a guilty sex offender charged with yet more sex offenses before the jury:

Just the attempts of a manipulative sex offender trying to talk his way out of it with Sergeant Rawl the same way he took that stand and tried to talk his way out of it to everyone in this courtroom.

App. 456, ll. 3 – 7.

B. How the matter was addressed at PCR.

At PCR, trial counsel offered no explanation for not seeking the appropriate remedy or getting a definitive ruling from the trial court regarding the validity of his objection:

Q. Did you get a ruling on page 446, 447, when there was a motion for mistrial, and it references -- do you recall making that motion for mistrial?

A. Let's see. Is it 446 and 447? Is that what you're saying?

Q. I thought that's what I -- let me double check that. Yeah, 446, 447.

A. I see where -- If I object to her mentioning of (indiscernible) this will be the last time he hurts a child and this will be the last time he steals the innocence -- I think it's stealing the innocence. Appealing the passion and prejudice. (Indiscernible) this must be the last time, which is just the same thing in a different ---

Q. So I'm just saying ---

A. --- different Cadillac, and I objected again ---

Q. Well ---

A. --- the Judge gave a charge -- let's see. I don't see where I'm moving for mistrial.

Q. Well, I guess -- I'm sorry. I misstated my question. My question was is it true you did not move for mistrial?

A. I did not.

App. 595, l. 7 – 596, l. 1.

Trial counsel was flippant regarding the failure to object to the solicitor repeatedly implying to the jury that petitioner was already a convicted sex offender:

Q. Okay. And moving on to the second amended application, you did not raise an objection to him being referred to -- the Defendant being referred to as a sex offender. You did not object to that.

A. That is correct. You're right.

Q. Is it possible that someone could have -- the jury could have heard that and thought sex offender registry? That would have been prejudicial against your client? Is that possible?

A. I think the 7 page confession was pretty much detailing how he molested a child. So the fact that the solicitor called him a child molester, it's kind of a six, and one half a dozen of another.

App. 596, ll. 2 – 14.

C. How the PCR Court ruled.

The PCR court found that a mistrial would have not been “appropriate with the trial court cautionary instructions to the jury” and that trial counsel “was not deficient in failing to request a mistrial after the instructions to the brief comments by the prosecutor.” App. 677. The PCR court also found trial counsel had a valid strategic reason for not objecting to the improper characterization that petitioner was a convicted sex offender since “Trial Counsel credibly testified that there was a seven-page confession detailing how Applicant molested a child and so the solicitor did not find the term to be objectionable. Trial Counsel articulated his reason for not objecting and therefore is found to not be deficient.” App. 680. As to both concerns, the PCR court found a lack of prejudice would preclude relief in the event trial counsel’s performance was deficient.

D. How the PCR Court erred.

In this matter, the solicitor improperly called petitioner as a “sex offender” numerous times (telling the jury that petitioner had already committed sex offenses and was on trial for another sex offense), that conviction of this “sex offender” was required to protect other children, and that the jury trial itself was stealing the innocence of minor by forcing her to testify. “A solicitor’s closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors’ passions or prejudices, and its content should stay within the record and reasonable inferences to it.” Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). “[W]hile [solicitor] may strike hard blows, [solicitor] is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” Berger v. United States, 295 U.S. 78, 88 (1935). It is “incumbent” for “trial counsel to object to the solicitor’s” improper closing

arguments. Brown v. State, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009). As noted in Brown, even when trial counsel articulates some valid strategy for failing to object to improper closing, such strategy will not be found valid in the face of the “evident impropriety of the solicitor’s remarks.” Id.

“Sex offender” carries negative connotations that may not be washed away from the jury’s conscious. The term “sex offender” is loaded with those negative connotations in the same way as the term “terrorist.” Vasquez v. State, 388 S.C. 447, 459, 698 S.E.2d 561, 567 (2010) (noting it “is indisputable that the term ‘terrorist,’ even in the general sense, can only conjure negative connotations.”). It is improper for the solicitor to tag a name onto the accused to tilt the scales of justice in favor of conviction by appealing to emotions with the jury. In State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000), it was the defendant’s nickname of “outlaw.” In reversing the conviction, this Court noted that the solicitor “repeatedly referred to Day as an outlaw in her closing argument in order to paint a picture of Day as someone who was proud of his status as an outlaw, who felt he was above the law, and who was able to deceive law enforcement by hiding evidence and concocting a story about self-defense.” State v. Day, 341 S.C. 410, 422–23, 535 S.E.2d 431, 438 (2000). In this case, the solicitor repeatedly painted the picture of appellant as a “sex offender” implying he had prior convictions to improperly influence the jury.

Moreover, a “prosecutor may not urge jurors to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted for reasons wholly irrelevant to his own guilt or innocence.” State v. Liberte, 336 S.C. 648, 654, 521 S.E.2d 744, 747 (Ct. App. 1999) (*quoting* United States v. Monaghan, 741 F.2d 1434, 1441 (D.C. Cir. 1984)). As in

Liberte, wrapping the conviction of petitioner into the need for the jury to protect other children from petitioner was “far too heavy a burden for the [petitioner] to bear.”

E. Prejudice.


Prejudice in this case mirrors Washington v. State, 445 S.C. 233, 911 S.E.2d 536 (Ct. App. 2025). In Washington, the Court of Appeals addressed the impact of improper vouching during closing argument. The Court of Appeals noted that “trial counsel's failure to object was prejudicial because there was no physical evidence of the alleged CSC and the only other evidence in the case required an assessment of the relative credibility of the witnesses.” Id., 445 S.C. 233, 243, 911 S.E.2d 536, 541.

In this case, the credibility of the minor’s claims of sexual abuse were supported by petitioner’s written confession, a document relied upon extensively by the PCR court (as well as petitioner’s own counsel) for finding none of the errors mattered. App. 596, ll. 2 – 14; 682. However, that confession itself was subject to a credibility determination by the jury. Petitioner testified at trial and admitted to certain improper behaviors with minor. App. 385, l. 19 – 386, l. 6. However, that admitted behavior did not amount to criminal sexual conduct with a minor. Petitioner testified that he felt threatened by investigator Rawl during the interrogation and that Rawl pushed him into “saying what he wanted me to say.” App. 400, ll. 15-19; 402, ll. 20-24. Petitioner said he made up the portions of the statement in which he admitted to sexual acts and touching of minor in response to Rawl’s interrogation. App. 402, l. 5 – 403, l. 25. Petitioner testified clearly that he did not have sexual contact or oral sex with minor during trial. App. 386, ll. 4-6; 403, ll. 23-25. The minor testified there was inappropriate sexual contact. The petitioner’s confession would certainly tilt the scales in favor of the jury believing the minor, as

happened during petitioner's original trial. However, that decision was one based upon credibility: the jury elected not to believe petitioner about being coerced into the confession. As in Washington v. State, 445 S.C. 233, 911 S.E.2d 536 (Ct. App. 2025), that reliance on credibility precludes a finding of lack of prejudice.

CONCLUSION

Based upon the foregoing argument, this Court should grant the petition and reverse the decision of the PCR court and grant petitioner a new trial.



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ATTORNEY FOR PETITIONER

This 28th day of August 2025.