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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT WESTLEY DEJESUS,

APPELLANT

APPELLATE CASE NO. 2024-001891

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
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STATEMENT OF ISSUE ON APPEAL

Whether the state's closing argument so infect the trial with unfairness as to make Appellant's conviction a denial of due process where the state improperly relied upon evidence that had been stricken from the record and misrepresented evidence in the record during its argument?

STATEMENT OF THE CASE

Appellant was indicted for one count of criminal sexual conduct with a minor, third degree, during the September 2019 term of the Beaufort County grand jury. R. 507-08. The state, represented by Monica Main and Jared Shedd, called the case to trial on October 28, 2024, before the Honorable Diane Schafer Goodstein[1] and a jury. R. 1. After a four-day trial, Appellant was found guilty as indicted. R. 488, l. 24-489, l. 3. Judge Goodstein sentenced Appellant to seven years' incarceration with mandatory sex offender registration upon his release. R. 502, ll. 6-18.

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1 The cover page of each transcript volume contains a Scrivener's error wherein Judge Goodstein is listed as Judge "Goldstein."

STANDARD OF REVIEW

"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 also* 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.").

ARGUMENT

The state's closing argument so infected the trial with unfairness as to make Appellant's conviction a denial of due process where the state improperly relied upon evidence that had been stricken from the record and misrepresented evidence in the record during its argument.

Relevant Facts

On January 14, 2019, April Fletcher-Clark, the director of programing at the Child Abuse Prevention Association (CAPA), gave a body safety presentation to third grade students at Whale Branch Elementary School in Beaufort County, South Carolina. During the presentation, Minor, who was then eight years old, disclosed she had been inappropriately touched. R. 206, l. 20-208, l. 14. Minor reported that "about a month ago" at "her cousin's house" she was touched. R. 209, ll. 1-6. However, Minor did not provide the name of the individual who purportedly touched her. R. 210, ll. 7-9.

The uncontested facts established at trial were that Alfred Rivers held a family and friends potluck gathering at his home on Thanksgiving evening of 2018. Among those in attendance were Shaquana Mitchell, her daughter (Minor), her son, Appellant, Appellant's then fiancé Aaricka Davis, Davis's two sons, and Davis's sister, Tiffany Willis. As the potluck ended, the adults began preparing to go out to Club Karma to see a Lil Boujee concert. Mitchell, Appellant, Rivers, Willis and numerous others all went to the club that night – witnesses reported anywhere from five to ten cars full of people left the potluck to head to the concert at Club Karma. Davis stayed home with the children, including Minor, as she was almost eight months pregnant at the time. R. 217, l. 8-218, l. 17; R. 222, ll. 15-24; R. 374, l. 5-378, l. 8.

Minor alleged that after the potluck Appellant told her to sleep in the bed with him and Davis instead of in the living room with Davis's boys. She reported that she was laying with her

back to Appellant, facing Davis, when Appellant reached over and began to rub her stomach. She stated his hands moved down but "didn't, obviously, touch anywhere below my belt line, but he got close." She stated he grabbed her hand and pushed it down his stomach into his pants, but she withdrew her hand when she felt hairs. After that, while she was crying, Appellant purportedly told her not to tell anyone. Minor fell asleep, and when she woke up the next morning, Appellant was allegedly rubbing her stomach and legs again but did not touch her vagina. Minor contended that Appellant touched an area she considered to be her genitals. Minor alleged the inappropriate touching occurred throughout the night. R. 235, ll. 10-19; R. 240, l. 3-242, l. 25; R. 249, ll. 8-10.

According to Davis, Appellant left for the club between 10:00 and 10:30 p.m., shortly after Mitchell had dropped her children, including Minor, off for Davis to watch. When it was time for bed, Davis told Minor that she was not comfortable with girls sleeping in the same room as her boys, so she told Minor that she would sleep with her in the bedroom. In the bedroom, Davis put on the evening news and got into bed with Minor. Minor eventually fell asleep. However, Davis was up all night due to her pregnancy and spent the evening on her phone or watching TV. R. 376, l. 15-381, l. 14.

Around 6:00 a.m., Appellant returned home and was let inside by Davis. The two sat talking about the evening for a short time before Appellant stated he had to work later that morning. The pair walked into the bedroom where Appellant removed his pants and climbed into bed. As he was climbing into bed, he felt a leg and questioned Davis who informed him Minor was sleeping in the bed. At that point, Appellant laid on top of the covers with his back to Minor. He covered himself with a spare blanket at the foot of the bed and closed his eyes for twenty-five to thirty minutes. Davis was also in bed, with her back against the footboard,

watching TV on her phone. She woke up Appellant shortly before 7:00 a.m. and he went to work. Davis maintained that she was with Minor the entire night, that Appellant spent no more than thirty minutes laying in the bed next to Minor, that she did not observe Appellant touch Minor, and that she never heard Minor cry. Davis testified that she put Minor to bed with her, as Appellant was not home at the time they went to bed. R. 381, l. 15-389, l. 24; R. 406, ll. 17-19. Willis confirmed that she was with Appellant at the concert, that she rode with him to and from the concert, and that Club Karma closed at 5 a.m. R. 362, l. 4-363, l. 3. No witnesses for the state testified to a time Club Karma closed or to when the Lil Bojuee concert ended.

While Davis was testifying, defense counsel questioned why she had come to testify that day. Davis responded, "[t]ruth be told, I am here because I would hate to see my daughter's father go to jail for something that I know for a fact he did not do." The state objected and after a bench conference, the court sustained the objection and struck the answer from the record. Defense counsel then questioned Davis to confirm she was telling the truth. R. 409, l. 17-410, l. 11.

During the state's closing argument, the solicitor repeatedly argued that Appellant knew Minor was in bed when he took his pants off to lay down. R. 435, ll. 22-24; R. 437, l. 22-438, l. 2. The state argued that Davis brought Minor into bed with Appellant and that Appellant was under the covers with Minor. R. 436, ll. 20-22; R. 438, l. 24-25. During its reply the state argued

> First, I want to be very clear because defense counsel got up and said that we were implying that this story about going to a concert is made up. I want to be clear. If I misspoke or made that that wasn't clear to you-all, I want to be very clear. *The concert is not made up. The time frame is made up.* Shaquana did confirm that she went to that concert with everybody. *She said they were home around 2:00.*
>
> ***

> It's also consistent with getting *back at two o'clock* and crawling in that bed with his pants off and molesting that little girl both that night and the following morning, just like Minor told you.
>
> The story that was made up was by Robert Dejesus and Tiffany Willis and this -- well, let me be clear. Tiffany, she admitted she was drunk. She had a lot of drink. She couldn't even tell you a number. But she admitted she was drunk and impaired. But her testimony to a specific time six o'clock, I know we were there until the club closed. This was six years ago and she was drunk.
>
> Aaricka does have -- Aaricka, despite not still with Robbie, she absolutely has to – she can downplay this it's only one child. *She said it on the stand. I don't want the father of my child to get convicted of this. That's her bias right there, and that's why she concocted this story* of I'm awake the whole time, I'm supervising, I'm repositioning and laying on the end of the bed to I can keep eyes on everything rather than just telling -- moving Kayla or telling Robbie, 'Hey, go sleep on the couch,' or, 'Go sleep somewhere else.' It's only for 30 minutes. Why do you have to crawl in this bed with no pants on?

R. 455, l. 3 – 456, l. 18. Defense counsel did not object to any portion of the state's closing argument.

Discussion

"A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) *citing* State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). "The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence." Id. "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Vasquez at 458, 698 S.E.2d at 566 citing Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). However, "[s]olicitors are bound to rules of fairness in their closing arguments." As our Supreme Court has explained,

> While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done. The solicitor's closing

> argument must, of course, be based on this principle. The argument therefore 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.

Vasquez at 458, 698 S.E.2d at 566 citing State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (quoting State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981)).

The state's closing argument not only misrepresented the evidence that was in the record, but it relied on evidence that the state itself had objected to and had struck from the record. Specifically, the state repeatedly misrepresented that Appellant took off his pants *after* learning that Minor was in bed. However, the testimony in the record was that Appellant removed his pants, climbed into bed, and *then* discovered Minor in the bed. Further, although the state alleged that Appellant and Minor were under the covers together, the testimony in the record is that Appellant was on top of the covers that Minor was under and that Appellant was covered with a separate blanket. Additionally, the state argued Davis put Minor in bed with Appellant, but the testimony was clear that Appellant was not home at the point when Davis initially got Minor into bed. All of these statements were not inferences drawn from the evidence and testimony, but misrepresentations of the evidence as adduced at trial.

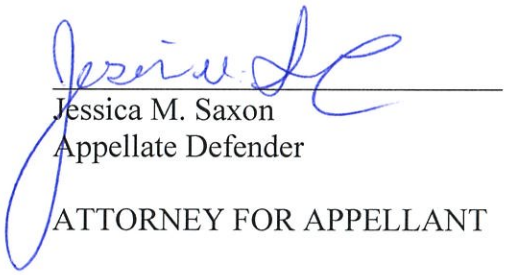
Significantly more egregious was the solicitor's argument in reply wherein he claimed the "time frame is made up" because Shaquana Mitchell testified that they all came home at 2:00 a.m. That testimony does not exist in the record. The only witness who testified to the time that Club Karma closed was Willis, who stated in closed at 5:00 a.m. Worse still, the state used the testimony of Davis that it had struck from the record to impeach her credibility. When Davis testified that she did not want to see her "daughter's father go to jail for something that I know for a fact he did not do," the state objected. R. 409, l. 17-25. After a bench conference, the trial judge instructed the jury, "[l]adies and gentlemen, I'm going to ask you to disregard the last

response. Counsel will re-ask the question and *please disavow it from your minds. The response was against our rules.*" R. 410, ll. 1-5 (emphasis added). This testimony was struck from the record at the state's request yet relied upon by the state in closing argument when the solicitor argued "*[s]he [Davis] said it on the stand. I don't want the father of my child to get convicted of this. That's her bias right there, and that's why she concocted this story*...R. 456, ll. 7-11.

The state's use of the struck testimony, as well as making up testimony about the time the club closed that was not in the record and misrepresenting the evidence in the record, was improper and highly prejudicial. The solicitor's argument was not grounded in fairness and a duty to do justice. Instead, the solicitor went far beyond the bounds of what the law allows and argued facts not in the record, facts explicitly struck from the record, and misrepresented the evidence entered at trial. There was not overwhelming evidence of Appellant's guilt, as this case was a credibility contest with the only decision the jury had to make was who to believe: Minor or Appellant and Davis. Davis was the key witness for the defense, her timeline and testimony established the near impossibility that Appellant could have inappropriately touched Minor on the night in question. While the state was free to attack that testimony, it had to attack the testimony within the bounds of the law. That did not occur in Appellant's case. The state's closing argument and argument in reply were improper and prejudicial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court reverse and remand his conviction and sentence for a new trial.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert W. Dejesus 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 Diane Schafer Goodstein, which was held on Oct. 28-31, 2024, 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 Robert W. Dejesus.

Respectfully Submitted,

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

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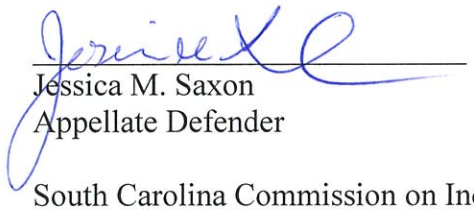
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True-billed indictment: 2019-GS-07-00393
(2) Trial Transcript Volume I-IV dated October 28, 29, 30, and 31, 2024

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



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ATTORNEY FOR APPELLANT

This 2nd day of October, 2025.

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."

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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 Robert W. Dejesus, #253788, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 2nd day of October, 2025.

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