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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi Curtis, Circuit Court Judge

Case No. 2022-001326
(2022-CP-22-00684)

Stanley Moultrie,

Petitioner,

vs.

The State of South Carolina,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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INDEX

TABLE OF AUTHORITIES

Cases:

State Rules:

QUESTION PRESENTED

Whether the Court should review the Court of Appeals unpublished opinion in this case, and where the court erred in its prejudice analysis of Mr. Moultrie's ineffective assistance of counsel claim when trial counsel failed to object to the solicitor's statements vouching for the State's witness.

STATEMENT OF THE CASE

Stanley Moultrie was indicted for kidnapping and armed robbery. App. 54–55. He proceeded to a jury trial before the Honorable D. Craig Brown August 22-24, 2016, and was found guilty of armed robbery and not guilty of kidnapping. App. 272. Based on his prior record, the trial court sentenced him to life without the possibility of parole (LWOP). App. 277. Mr. Moultrie filed a direct appeal, arguing the trial court erred in denying his motion for a mental health evaluation. *See* 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 The Court of Appeals affirmed in an unpublished opinion pursuant to Rule 220(b), SCACR.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).

Mr. Moultrie 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 March 10, 2021. App. 351–397. Mr. Moultrie proceeded to an evidentiary hearing before the Honorable William H. Seals, Jr. on June 23, 2001, who ultimately denied and dismissed the application with prejudice by order dated July 31, 2021. App. 467–490. Mr. Moultrie failed to timely appeal, but after a hearing before the Honorable Kristi R. Curtis, he 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.

The Court of Appeals granted certiorari with respect to the issue raised in this brief on May 7, 2024. After a timely filed petitioner's brief, the Court of Appeals filed its opinion denying relief on October 15, 2025. *Stanley Moultrie v. State*, Unpublished Opinion No. 2025-UP-247.

STATEMENT OF RELEVANT FACTS

Joyce Messinger was working at the Shoe Show in Georgetown as the assistant manager on January 20, 2015, when a man entered wearing a blue jumpsuit, a blue cap, and round rimmed glasses. App. 123, 130, 135. He seemed to be looking for something, so Ms. Messinger asked if she could help him. App. 124. The man pulled out a Nike shoe and requested it in size thirteen. App. 124. Realizing it was not in stock, Ms. Messinger picked up the phone to call the Conway Shoe Show to see if they had a pair. App. 125. The man then 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, he told her to empty the registers and hand her the money. App. 125. He then told her to sit on a bench facing the employee door as he exited the store. App. 125.

After he left, Ms. Messinger locked all the doors and called 911. App. 126. She later identified Mr. Moultrie as the perpetrator in a photo lineup about ten days later. App. 132. Mr. Moultrie was arrested and charged with armed robbery and kidnapping.

In addition to Ms. Messenger's testimony, at trial the State presented testimony of Sergeant Jason Ward of the Georgetown Police Department. Sergeant Ward testified that when attempting to develop a suspect, he obtained surveillance video from the nearby Walmart and still photos from a nearby Cato. App. 154. The quality of the video was not such that Sergeant Ward could conclusively identify Mr. Moultrie or the type of car. App. 191–92. After contacting the Charleston Police Department for assistance with connecting a suspect with the vehicle on tape, Sergeant Ward obtained a plate number and received the information on Mr. Moultrie. App. 161–62. Officers obtained a search warrant for Mr. Moultrie's residence and found a car matching the tag and description in the video, size thirteen shoes, glasses, and a blue jumpsuit. App. 165-66.

The State also offered cell phone records indicating Mr. Moultrie was in the vicinity of the Shoe Show during the time of the robbery. App. 216. The jury found Mr. Moultrie guilty of armed robbery, but not guilty of kidnapping, and he was sentenced to LWOP. App. 272, 277

ARGUMENT

I. The court of appeals erred in upholding the PCR court's opinion that found trial counsel did not render ineffective assistance of counsel when he failed to object to the solicitor's vouching for the veracity of the key State's witness and that Petitioner was not prejudiced by his counsel's substandard performance.

The PCR court erred in finding the solicitor's unobjected-to statements vouching for the State's witness were not improper. The State is not allowed to thrust the weight of the sovereign behind the credibility of a witness, and trial counsel was deficient in failing to object. Furthermore, because of the other statements at trial and the lack of overwhelming evidence, this error cannot be deemed harmless.

"A prosecutor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness." *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). "A prosecutor's vouching for the credibility of a government witness raises two concerns: (1) such comments can convey the impression that evidence not presented to the jury but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury; and (2) the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence." *State v. Kelly*, 343 S.C. 350, 368–69, 540 S.E.2d 851, 860 (2001) (quoting *United States v. Walker*, 155 F.3d 180, 184 (3d Cir. 1998), *rev'd on other grounds and remanded*, 534 U.S. 246 (2002). "The danger is

that a juror might be persuaded to rely on the opinion of others instead of exercising his independent judgment as to the facts." *State v. Thomas*, 287 S.C. 411, 412–13, 339 S.E.2d 129, 129 (1986). "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." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).

Although the PCR court acknowledged that the solicitor attested to the genuineness of the witness's emotions and his own belief in her veracity, it concluded "nothing rose beyond the level of fair inferences drawn from her testimony." App. 486. However, the issue here is not whether her believability was a fair inference—it would be a wonder that the State would offer a witness whose testimony did not carry a fair inference of credibility. And the solicitor did more than just invite the jury to rely on inference, he unequivocally told the jury Messinger was "genuine" in her statements: "What she showed on that stand was pure and genuine in every aspect in every way it could possibly be. This is not acting; she is about as real as it gets. The emotion you saw from that stand was genuine." App. 234. He went on to say more directly, "I tell you right now that Ms. Messinger's testimony is by itself, if you find it credible --- ***which in my opinion she was*** and for the reasons I've stated and y'all saw her up there - - -if you find her credible that testimony is enough by itself to support a conviction in this case." App. 237 (emphasis added).

The law here is very well established. The solicitor's opinion inescapably carries with it the imprimatur of the Government, and he is not permitted to undermine a fundamental jury determination by assuring a jury that he, personally, believed her. And in this case, the threat that the jury would simply follow the solicitor's lead was magnified by the trial court's misleading statements about the burden of proof and the players' positions. The jury's role was framed as a

truth finder and the trial court had assured them the attorneys were "officers of the Court sworn to uphold the integrity and fairness of our judicial system and to help you in the search for the truth." App. 110. If the solicitor, a guide on the quest for the truth, told them the truth was whatever Ms. Messinger testified, there is little cause to question him. He is, of course, there to uphold integrity and fairness, and it would be unfair to say a woman was speaking the truth unless he knew it to be so. These closing statements infused the trial with unfairness, and trial counsel erred in failing to object.

These statements cannot be considered harmless beyond a reasonable doubt. To establish prejudice, the defendant is required "to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Smith v. State*, 386 S.C. 562, 565–66, 689 S.E.2d 629, 631 (2010). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* As the Supreme Court has noted on multiple occasions, "arguments of this kind can rarely be harmless." *E.g.*, *State v. Thomas*, 287 S.C. 411, 413, 339 S.E.2d 129, 129 (1986).

The solicitor wholly undermined the jury's province in making an independent determination and exacerbated the prejudice by telling the jury that the credibility determination of Ms. Messinger was the entirety of the case. App. 237. And it was not just that the State thought she was credible that proved its case, but the solicitor went a step further and emphasized that the jury could *only* find Mr. Moultrie not guilty if it found "[Messinger was] either lying or she's just not capable of telling the truth." App. 242. So, the State made the credibility of Ms. Messinger the outcome to determine Mr. Moultrie's guilt, and then assured the jury she was credible. With

the evidence framed thus and flanked by the trial court's assurances that the solicitor would guide them to the truth, this error undermines any confidence in the verdict.

Because the solicitor infected this crucial piece of evidence, there is no overwhelming evidence to save the verdict. "[F]or 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' cannot possibly be met." *Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018). Without Ms. Messinger's testimony, the evidence left is speculative and circumstantial. A knife was never recovered, there was no DNA or other forensic evidence presented, and Mr. Moultrie never confessed. The only evidence, therefore, is some blurry video footage from neighboring stores, cellphone evidence placing Mr. Moultrie in the vicinity, testimony that a car that looked like his was in the parking lot, and the items recovered from his home. Although that may be enough circumstantial evidence to get past a directed verdict, it is hardly "corroborating evidence so strong" that it negates the reasonable probability that the jury would have had reasonable doubt as to Mr. Moultrie's guilt. Trial Counsel was ineffective for failing to object to the solicitor's prejudicial statements, and this Court should grant Mr. Moultrie's petition for writ of certiorari.

II. The Court of Appeals decision is inconsistent with this Court's precedents.

South Carolina precedent holds that a prosecutor may not express personal belief in a witness's credibility. Such vouching gravely risks replacing the jury's judgment with the perceived authority of the State and is condemned because it can unfairly tip the balance in close cases. In

Mr. Moultrie's case, the closing argument did not merely reference the witness's demeanor, but explicitly vouched for her: the solicitor stated that what the witness "showed on that stand was pure and genuine in every aspect in every way it could possibly be," that she "is about as real as it gets," and that her emotion was "genuine." The solicitor further asserted that "Ms. Messinger's testimony is … enough by itself to support a conviction … if you find it credible—which in my opinion she was…." He framed the decision as requiring the jury to believe the victim was either "lying or … just not capable of telling the truth" to acquit. These comments cross the line established in *State v. Kelly*, *State v. Shuler*, and *State v. Thomas*, and are not mere fair comment on the evidence, but rather explicit personal assurances by the sovereign's advocate.

Further, the court of appeals, in its prejudice analysis, reasoned that these improper statements were harmless in light of standard instructions and the remaining evidence. However, this analysis is inconsistent with the South Carolina Supreme Court's guidance that this type of vouching "can rarely be harmless," because it invites the jury to accept the government's personal assurance rather than exercise independent assessment. See *State v. Thomas*, 287 S.C. 411, 339 S.E.2d 129 (1986).

The Court of Appeals further misapplied *Strickland*'s prejudice prong by viewing the case as supported by overwhelming evidence, relying on circumstantial physical evidence and the jury's split verdict as evidence that the vouching did not affect the outcome. This overlooks the Supreme Court's requirement, clarified in *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018), that the overwhelming evidence standard is met only where proof is so compelling that a different result would not be reasonably probable—typically involving confessions, DNA, or uniquely incontrovertible evidence. Here, the State's proof was circumstantial, and the conviction

ultimately depended on the jury's credibility assessment of the eyewitness, whose testimony the solicitor improperly elevated through personal vouching.

Notably, the trial court's instructions prior to closing heightened the prejudice: jurors were told that attorneys are "officers of the court … to help you in your search for the truth." With that imprimatur, the solicitor's statements carried even greater weight and threatened to substitute his "truth" for the jury's own. This factor was not adequately considered in the Court of Appeals' prejudice analysis.

Furthermore, the opinion's observation that the jury acquitted Mr. Moultrie of kidnapping does not negate the risk of prejudice on the armed robbery conviction, since the State's case on robbery was expressly made to turn on the jury's view of the victim's credibility. It cannot be presumed that the jury compartmentalized the improper comments—indeed, the split verdict may indicate the jury's struggle with the evidence and thus reinforce the reasonable probability of a different outcome had the improper vouching been promptly and properly addressed by counsel. For all these reasons, Petitioner respectfully submits that the Court's decision misapprehended settled law regarding prosecutorial vouching and its proper role in *Strickland*'s prejudice analysis.

Petitioner submits that there is at least a reasonable probability that, but for counsel's failure to object and request corrective action, the outcome would have been different. Petitioner therefore asks this Court to grant certiorari.

CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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