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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Daniel McLeod Coble, Circuit Court Judge

PETER L. COFFEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002129

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective for failing to object when the trial judge deprived the defense the right to present last argument by allowing the prosecution to present rebuttal closing argument when the defense offered no evidence or testimony at trial?

STATEMENT

In March of 2018, the Lexington County Grand Jury indicted Petitioner, Peter L. Coffey, for murder and criminal sexual first degree, indictments #2018-GS-32-00943, 00944. (App. pp. 872-875). On March 12, 2018, Petitioner proceeded to jury trial before the Honorable R. Knox McMahon. Benjamin Stitely and Theo Williams represented Petitioner at trial. Shawn Graham and Bradley Pogue prosecuted the case. The jury found Petitioner guilty as indicted. Judge McMahon sentenced Petitioner to life without parole for murder and a consecutive thirty (30) years for criminal sexual conduct. A timely notice of intent to appeal was filed and the direct appeal perfected by the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Coffey, 2020-UP-186 (S.C.Ct.App. filed June 17, 2020).

On December 2, 2020, Petitioner filed a timely application for post-conviction relief [PCR]. (App. pp. 878-886). The State filed a return and motion for more definite statement on July 1, 2021. (App. pp. 887-901). On August 14, 2024, Petitioner filed an amended PCR application. (App. pp. 902-905). On March 3, 2025, an evidentiary hearing was held before the Honorable Daniel M. Coble. Ola A. Johnson represented Petitioner. D. Russell Barlow, II, represented the State. In a written order signed September 24, 2025, Judge Coble denied relief and dismissed the application. (App. pp. 977-1028). A timely notice of intent to appeal was filed on October 20, 2025. This appeal follows.

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for failing to object when the trial judge deprived the defense the right to present last argument by allowing the prosecution to present rebuttal closing argument when the defense offered no evidence or testimony at trial.

At the end of the trial before closing arguments the judge told the jury, "The procedure we follow now is the closing arguments by the attorneys. The flow of those closing arguments: The State goes first, being the party bearing the burden of proving its case beyond a reasonable doubt, and closes in full, followed by the Defense closes in full. The State, under our law, has the right for a brief reply closing argument to any new matter that may be brought up by the Defense in their closing argument." (App. p. 801, line 23 – p. 802, lines 1-6). It appears, however, that the Defense did not offer any evidence or testimony at trial and should have been entitled to last closing argument. Trial counsel failed to object to the judge's comment that the State was allowed a brief reply closing argument to any new matter raised by the Defense.

The State presented closing argument first. (App. pp. 803-825). Defense counsel then presented closing argument. (App. pp. 825-836). The State then presented a brief reply closing argument. (App. p. 836, lines 18-25). Trial counsel failed to object to the judge allowing the State to present a brief reply closing argument when the Defense offered no evidence or testimony at trial.

Petitioner alleged in the PCR application that, "Defense counsel failed to object to Prosecutors Rebuttal statement in closing argument." (App. p. 880). During the PCR hearing Petitioner testified:

> After Mr. Stitely had his closing argument right there, the solicitor jumps in and he says we'd all like to know why – why Peter Coffey killed her that night. I want to know why, you want to know why. Mr. Stitely says he doesn't know why, but we don't have to prove that. We would if we could. The law doesn't

> require us to prove that. We would if we could. The law doesn't require us to prove why something happened, just that it happened, and that's why – what the judge will tell you here, and the judge went on to carry out the instruction right here.
>
> Well, I didn't get on the stand. I didn't testify. I didn't – didn't have nothing to do with this right here. It was supposed to be open and close. What I understand with Beaty – State versus Beaty, the Supreme Court, Beaty, what they said, if there's no evidence brought forth from the defense, you open and close the case right there, but this guy here, he's kept beating on there, scaring the jurors, speaks about this right here. I thought the courts was different though. I thought the court system was different than what it is – what I – what it tells it to be right here. I didn't know nothing like this, man. I just – I'm baffled on this right here.

(App. p. 922, lines 12 – p. 923, lines 1-8).

During the PCR hearing trial counsel was asked about the State's rebuttal statement and referred to page 836 of the trial transcript. (App. p. 952, lines 8-11). Trial counsel answered, "Okay. I don't know on what basis I would have been able to object to it." (App. p. 952, lines 12-13). Trial counsel then said, "The State has the right to put forward their testimony or their argument." (App. p. 952, lines 15-16).

In the order of dismissal the PCR judge wrote, "Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the prosecutor's rebuttal statement in closing (p. 836). This Court finds this allegation to be without merit." (App. p. 1000). The PCR judge additionally wrote, "This Court finds there was no legal basis for an objection to the Solicitor's comment. Furthermore, Applicant's reliance on State v. Beaty is misguided as the State's rebuttal Thus, Applicant failed in his burden of proving deficiency or prejudice." (App. p. 1003). The PCR judge erred. Trial counsel was deficient for failing to object when the trial judge deprived the defense of presenting last argument by allowing the prosecution to present rebuttal closing argument when the defense offered no evidence or testimony at trial. Applicant's reliance on State v. Beaty, 423 S.C.26, 813 S.E.2d 502 (2018),

supports the position that the Defense was entitled to final closing argument. Petitioner was prejudiced by the deficient performance.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Trial counsel was ineffective for failing to object when the trial judge deprived the defense of presenting last argument by allowing the prosecution to present rebuttal closing argument when the defense offered no evidence or testimony at trial. The right to last closing "argument to the jury is a substantial right, the denial of which is reversible error." State v. Rodgers, 269 S.C. 22, 24-25, 235 S.E.2d 808, 809 (1977). "In a criminal prosecution, where a defendant introduces no testimony, he is entitled to the final closing argument to the jury." State v. Mouzon, 326 S.C. 199, 203, 485 S.E.2d 918, 921 (1997). The defendant in a criminal case has

the right to reply closing argument when he does not introduce evidence. State v. Garlington, 90 S.C. 138, 72 S.E. 564, 566 (1911); State v. Brisbane, 2 S.C.L. 451, 454 (S.C. Const. App. 1802) (in all cases in which a criminal defendant calls no witnesses, he should have the privilege of concluding to the jury).

State v. Beaty, Op. No. 27693, 2016 WL 7474479 (S.C. Sup. Ct. filed Dec. 29, 2016) (Shearouse 2017 Adv. Sh. No. 1 at 14–17), was the first Beaty opinion. This opinion was superseded on rehearing by State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018). In Beaty the defense introduced evidence during trial. The Court wrote:

> Currently, there is no rule governing the content and order of closing arguments in criminal cases in which a defendant introduces evidence, except for the "constitutional rule" that a defendant's right to due process cannot be violated at any stage of a trial. Consequently, trial judges must, on a case-by-case basis, ensure that a defendant's due process rights are not violated during the closing argument stage. Absent authority to formally adopt procedural rules, our authority—and the authority of the trial court—is but to address due process considerations as they arise. In cases in which a defendant introduces evidence, trial judges clearly have the authority to require the State to open in full on the facts and the law and have the authority to restrict the State's reply argument to matters raised by the defense in closing. This authority remains in keeping with the trial judge's authority to ensure that a defendant's due process rights are not violated during a criminal trial.

Beaty, 423 S.C. at 46, 813 S.E.2d at 512–13.

With regard to cases, like the present case, where the defense did not introduce evidence during trial, the Court in Beaty wrote:

> While we acknowledge and respect the limitations placed on this Court's power pursuant to article V, section 4A of our constitution, in order for our criminal court system to operate efficiently, effectively, and consistently, clearly stated rules governing the content and order of closing argument are required. Our current closing argument rules consist of the following patchwork: Pursuant to the common law rule pronounced in Brisbane and as clarified in Garlington, in cases in which no defendant introduces evidence, the defendant(s) have the right to open and close, but may waive the right to both or may waive opening and present full argument after the State's closing argument. Pursuant to the common law rule set forth in Huckie, if two or more defendants are jointly tried, if any one

> defendant introduces evidence, the State has the final closing argument. Pursuant to the common law rule as clarified in Gellis, in cases in which a defendant introduces evidence of any kind, even through a prosecution witness, the State has the final closing argument. However, in cases in which the State is entitled to the reply argument, there is no common law or codified rule as to whether the State must open in full on the law, or the facts, or both, or neither, and there is no rule governing the content of the State's reply argument.

State v. Beaty, 423 S.C. at 42, 813 S.E.2d at 510–11. Both Beaty opinions appear to preserve the common law rule that the defendant has the right to open and close if the defendant presents no evidence. See State v. Beaty, Op. No. 27693, 2016 WL 7474479, n. 4 (S.C. Sup. Ct. filed Dec. 29, 2016) (Shearouse 2017 Adv. Sh. No. 1 at 14–17) Petitioner in the present case had the right to final closing argument. Trial counsel was ineffective in failing to object when the judge told the jury that the State had the right to a brief reply and then allowing the State to make a brief reply.

Petitioner was prejudiced by trial counsel's deficient performance. In closing argument trial counsel argued:

> The solicitor, in his closing argument, got up here and he said it's about rage, it's about hate, it's about humiliation. Why? Where is the motive? You've sat here all week. Let's take what his witnesses said. They were friends for 20 years. Pete and Ms. JT. Why? Why in the world would he have this fit of rage and do such a horrible thing to someone he saw everyday, by accounts of the witnesses, who was at her house daily? Why?

(App. p. 826, line 22 – p. 827, lines 1-6). While the State's rebuttal was brief and a correct statement of the law, the prosecutor was erroneously allowed to negate the defense's argument that the State failed to prove motive. Although motive is not an element of murder, ("In this state, it is well settled that motive is not an element of murder and, therefore, the State need not prove motive. State v. Hartley, 307 S.C. 239, ——, 414 S.E.2d 182, 187 (Ct.App. 1992) (Sanders, C.J., concurring)." State v. Smith, 307 S.C. 376, 385, 415 S.E.2d 409, 414 (Ct. App. 1992)), the defense argument that the State failed to prove motive went to reasonable doubt.

Petitioner had the right to final closing argument. Trial counsel's failure to object prejudiced Petitioner.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

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This 11th day of March, 2026.