RECEIVED
Apr 07 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000551

ANTHONY BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RESPONDENT'S PETITION FOR REHEARING

Through an unpublished decision issued on March 18, 2026, this Court affirmed the post-conviction relief ("PCR") judge's ruling rejecting Petitioner Anthony Briggs's claim his defense counsel was constitutionally ineffective for failing to object to the solicitor's closing argument remarks. Briggs v. State, Op. No. 2026-UP-125 (S.C. Ct. App. filed Mar. 16, 2026). In doing so, this Court correctly concluded Briggs did not establish any part of the solicitor's closing argument so infected his trial with unfairness to such an extent that it resulted in a denial of due process. However, in addition to that, this Court found defense counsel's performance was, in fact, deficient after determining "the solicitor's comment constituted an improper Golden Rule argument[.]" Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent ("the State") respectfully petitions for rehearing because this Court appears to have overlooked

and misconstrued several important points when finding defense counsel's performance during trial was deficient.[1]

Specifically, as argued by the State in its brief in Briggs's case, a "Golden Rule" argument is generally speaking one that asks the jurors to put themselves in the shoes of one of the parties. State v. Harris, 382 S.C. 107, 120, 674 S.E.2d 532, 538 (Ct. App. 2009); see Braddy v. State, 111 So. 3d 810, 842 (Fla. 2012) ("Golden rule arguments are arguments that invite the jurors to place themselves in the victims position *during the crime* and imagine the victim's suffering." (emphasis added and citation and internal quotations omitted)). In the context of a criminal prosecution, an argument asking the jurors to place themselves in the victim's shoes is ordinarily improper because it tends to completely destroy all sense of impartiality of the jurors and serves to arouse passion and prejudice. Brown v. State, 383 S.C. 506, 515-516, 680 S.E.2d 909, 914 (2009); see State v. Long, 975 A.2d 660, 677 (Conn. 2009) ("The animating principle behind the prohibition on golden rule arguments is that jurors should be encouraged to decide cases on the basis of the facts as they find them, and reasonable inferences drawn from those facts, rather than by any incitement to act out of passion or sympathy for or against any party."); Panchoo v. State, 185 So. 3d 562, 564 (Fla. Dist. Ct. App. 2016) ("Golden Rule arguments are improper because they depend upon inflaming the passions of the jury and inducing fear and self-interest." (citations, brackets, and internal quotations omitted)).

[1] Although this Court correctly affirmed the post-conviction relief judge's ruling denying Briggs's application for post-conviction relief, the State is currently seeking rehearing solely for the purpose of best ensuring its arguments are not waived or foreclosed in any future proceedings that potentially may occur in Briggs's case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. State v. Humphries, 354 S.C. 87, 91 n. 2, 579 S.E.2d 613, 615 n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

Importantly though, "an argument which asks the jurors to draw inferences *from the evidence* based on how a reasonable person would act if placed in the position of the victim is not an improper golden rule argument." Buszkiewic v. State, 424 P.3d 1272, 1277 (Wyo. 2018) (emphasis added). Similarly, "rhetorical questions which ask the jurors to use their common sense and life experiences to weigh the trial evidence do not violate the rules even though the prosecutor may ask the jury what they would do in similar circumstances." Id. Likewise, it does not constitute an improper "Golden Rule" argument for a solicitor to ask jurors to use their own personal experiences to evaluate the credibility of a witness, including the victim. Cf. Mines v. State, 56 A.3d 560, 575-576 (Md. Ct. Spec. App. 2012) (concluding a prosecutor's closing argument did not constitute an improper "Golden Rule" argument but, instead, was proper when it simply asked jurors to use their own experiences to evaluate the credibility of the victim's testimony, which was consistent with the trial judge's jury instructions encouraging the jurors to consider the evidence in light of their own experiences and employ common sense in evaluating it). Thus, "[n]ot all arguments that ask jurors to place themselves in a particular party's situation implicate the prohibition on golden rule arguments." State v. Diaz, 311 A.3d 714, 729 (Conn. 2024) (citation and internal quotations omitted).

In determining if an argument constitutes an improper "Golden Rule" argument, "a reviewing court should consider the purpose of the argument, the evidence that supports it, the context in which it was made, and whether it is a fair response to arguments advanced by the defense." Kitt v. State, 330 So. 3d 597, 602 (Fla. Dist. Ct. App. 2021). Critically, context matters. See United States v. Robinson, 485 U.S. 25, 33 (1988) (instructing "prosecutorial comment must be examined in context"); State v. Weaver, 361 S.C. 73, 89, 602 S.E.2d 786, 794 (Ct. App. 2004) ("In making this determination, we must examine the alleged impropriety in the

context of the entire record."). Moreover, "some latitude must necessarily be allowed" to the solicitor, and the most damaging meaning or interpretations should not be lightly drawn when evaluating the propriety of a solicitor's remarks to the jury. State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961); see Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974) (instructing courts "should not lightly infer" a jury will draw the most damaging meaning from closing argument remarks).

With those guiding principles in mind, the solicitor in Briggs's case did *not* use her closing argument to improperly appeal to the passions or prejudices of the jurors, attempt to get them to place themselves in the shoes of Briggs's victim ("Victim") at the time she was being abused, or seek for them to consider how the victim must have been feeling when she was enduring the sexual abuse at Briggs's hands. Instead, the solicitor made remarks designed to encourage the jurors to rely on their own common sense and knowledge of human nature when evaluating the credibility of *trial evidence* by considering factors that might have impacted Victim's testimony and demeanor when she was on the witness stand publicly speaking in front of a group of strangers about intimate topics during Briggs's trial. Cf. United States v. Kirvan, 997 F.2d 963, 964 (1st Cir. 1993) ("Kirvan's brief relies primarily on cases that forbid so-called 'golden rule' arguments in which plaintiffs or prosecutors ask the jury to put itself in the place of the victim. But 'golden rule' cases do not apply where, as here, the jury is asked to put itself in the place of an *eyewitness*. In this situation, the invitation is not an improper appeal to the jury to base its decision on sympathy for the victim but rather a means of asking the jury to reconstruct the situation in order to decide whether a witness' testimony is plausible." (citation omitted)); State v. Victor O., 20 A.3d 669, 688 (Conn. 2011) (concluding the prosecutor's closing arguments remarks, including ones asking the jurors "to imagine how [the victim] felt while

testifying and to consider how those feelings may have affected his demeanor during that testimony," were not inflammatory and "fell well within the limits of fair argument"); State v. Bell, 931 A.2d 198, 214-215 (Conn. 2007) ("In the present case, . . . the prosecutor was not appealing to the jurors' emotions or to their sympathies for the victim. Rather, he was asking the jurors to draw inferences from the evidence that had been presented at trial regarding the actions of the defendant and [a witness], based on the jurors' judgment of how a reasonable person would act under the specified circumstances."); Kitt v. State, 330 So. 3d 597, 603 (Fla. Dist. Ct. App. 2021) ("As the purpose of the arguments was not to urge the jury to emphasize with the children's fear, but to understand the fiancée's actions, these arguments were not improper."); State v. Wright, 216 S.W.3d 196, 201 (Mo. Ct. App. 2007) ("[H]ere the jurors were not asked to place themselves in the victim's shoes and imagine the details of the crime being committed on them. Rather, the jury was asked to imagine being the thirteen-year-old victim and being asked to testify about sexual matters in front of adult strangers. This did not suggest a personal danger to the jury or their families and thus did not constitute improper personalization . . . . Instead, it was an attempt by the prosecutor to explain to the jury why Victim appeared nervous while testifying and, in effect, made Victim's testimony more credible." (citation omitted)); Buszkiewic, 424 P.3d at 1277-1278 ("In this case, the prosecutor was not making an appeal for the jury to decide the case based upon sympathy or bias rather than the evidence. Instead, she requested that the jury consider the evidence using their life experiences and common sense. When she asked the jurors whether they would remember the number of times they had been slapped, she was requesting that they look at the evidence through the lens of their ordinary affairs. In other words, the prosecutor was simply making the point that it is human nature not to remember all of the details of a violent encounter, such as the number of slaps."). Significantly,

that distinction matters, and it should not be lightly overlooked. See Donnelly, 416 U.S. at 646-647 ("Such arguments, like all closing arguments of counsel, are seldom carefully constructed in toto before the event; improvisation frequently results in syntax left imperfect and meaning less than crystal clear. While these general observations in no way justify prosecutorial misconduct, they do suggest that a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.").

Accordingly, by presenting the closing argument she presented, the solicitor was not—contrary to this Court's determination—engaging in prohibited behavior designed to inflame the passions and prejudices of the jury but, instead, was appropriately asking the jurors through her remarks to employ and rely upon their own personal experiences and common sense[2] when evaluating the credibility and demeanor of the trial testimony presented in the courtroom. See Long, 975 A.2d at 668 (explaining it is entirely appropriate for counsel to appeal to jurors' common sense through a closing argument because jurors are expected to apply their own observations and experiences to the facts presented when deciding a case); cf. Robinson v. State, 838 S.E.2d 92 (Ga. Ct. App. 2020) (rejecting the contention the prosecutor's argument asking the jurors to think back to a traumatic experience in their own lives and consider how many details they remembered about that experience constituted an improper "Golden Rule" argument because, when viewed in context, that argument was not designed to engender sympathy for the victim but, instead, was designed to aid the jurors' consideration of the testimony presented); Finch v. Commonwealth, 681 S.W.3d 84, 98 (Ky. 2023) ("None of the foregoing statements

[2] Notably, such remarks were also fully consistent with the trial judge's jury instructions, which directed the jurors to employ their common sense to decide the case and evaluate witness credibility. (App'x p. 383; p. 392).

asked the jurors to imagine themselves or someone they care about in the position of the crime victim. They are therefore not 'golden rule' arguments, and no error occurred."). Simply put, such closing argument remarks were fair and proper, in no way constituted an improper "Golden Rule" argument, and were vastly different from the argument remarks presented in the only "Golden Rule" argument decision this Court relied upon when deciding Briggs's appeal.[3] See State v. Busse, 439 S.C. 104, 111, 886 S.E.2d 208, 212 (2023) ("[A] prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer.").

For all the foregoing reasons coupled with the reasons articulated in the State's brief, the State respectfully requests this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules. Upon doing so, this Court—for the reasons articulated—should vacate its prior opinion, issue a new opinion, and correctly affirm the PCR judge's ruling in total without finding either defense counsel's performance was deficient or the solicitor's closing argument was improper.

---

[3] The portion of the closing argument found to be improper in State v. Harris, 382 S.C. 107, 120, 674 S.E.2d 532, 539 (Ct. App. 2009)—the lone "Golden Rule" argument decision relied upon by this Court in deciding Briggs's case—consisted of the following remarks:

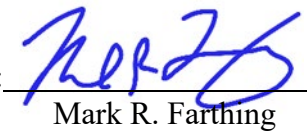
> Harris had to fire twice and Harris is not sure when he shot Pierre which hand he had the gun in but when he shot accidentally he said, well, I'm right handed. I had it in here. I think he had it in his coat pocket. So as he's got him, got Harris running down the stairs. He gets his gun out, ran and shoots twice . . . . Now, they can't get around this and if y'all believe this, don't leave this jury room, don't leave this jury box and he charges you and just let him go right now. Just let him go.

(brackets omitted). Significantly, those particular remarks from Harris bore no similarities whatsoever to the closing arguments remarks this Court found to be problematic in Briggs's case, and this Court appears to have potentially overlooked that fact when relying upon Harris to find error with the solicitor's striking-different closing argument in the case at bar. (App'x pp. 348-350).

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

By: 
Mark R. Farthing
S.C. Bar Number 76901

April 7, 2026

RECEIVED
Apr 07 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000551

ANTHONY BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

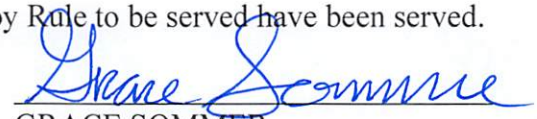
Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Respondent's Petition for Rehearing on Petitioner by sending an electronic copy via email to the address listed in AIS for the following individual:

Sarah E. Shipe, Esquire
S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify all parties required by Rule to be served have been served.
This 7th day of April, 2026.



GRACE SOMMER
Legal Assistant
Office of the Attorney General