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Apr 15 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from State Grand Jury County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARLO JACKSON,

APPELLANT

APPELLATE CASE NO. 2025-000637

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing the solicitor to suggest via an improper remark at closing that a possible threat was likely conveyed to a particular witness who did not testify completely at trial because this prejudiced the case for the defense as said comment infected the trial with sufficient unfairness as to deny appellant a fair trial.

STATEMENT OF THE CASE

Appellant Marlo Jackson was convicted on drug charges per bench trial held before Judge Paul M. Burch on March 26, 2025, at the Kershaw County General Sessions Court. Appellant was found guilty of trafficking in methamphetamine (conspiracy), trafficking in cocaine (conspiracy), trafficking in cocaine base (conspiracy), manufacturing, distributing and possession of fentanyl (conspiracy), and trafficking in heroin (conspiracy). Appellant was sentenced to an aggregate thirty-year prison term.

Appellate appealed. This brief follows.

STANDARD OF REVIEW

The admissibility of evidence is within the sound discretion of the trial judge. State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). Evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. State v. Mansfield, *supra*.

ARGUMENT

The trial judge erred in allowing the solicitor to suggest via an improper remark at closing that a possible threat was likely conveyed to a particular witness who did not testify completely at trial because this prejudiced the case for the defense as said comment infected the trial with sufficient unfairness as to deny appellant a fair trial.

At trial, numerous witnesses testified regarding their controlled drug buys from appellant, and many eyewitnesses connected to the controlled drugs buys, including police officers and co-conspirators, testified with respect to these drug activities as well. Courtnege Burriss, who was allegedly connected to the drug charges filed against appellant, testified at trial. Burriss stated that he did not “know nothing about nothing” and that he was “not in this” and that “[he’s] on [his] own.” Tr. 56, l.21-23. The trial judge sua sponte asked Burriss in effect if he had been threatened with respect to offering his testimony at trial, and Burriss replied with a “no” answer. Tr. 57, l.15-21. Then, Burriss pled the Fifth Amendment and gave no further testimony at trial. Tr. 53, l.8-p. 58, l.25.

At the end of all testimony submitted, the solicitor made the following closing remarks:

SOLICITOR: That’s not all the drug deals we’ve heard about in this case, but that is the drugs that have been submitted. We got cocaine, 10.34 grams from Tevin Green, 27.88 sold by Marlo Jackson. 56.18 grams sold by Marlo Jackson, 635 grams buried in Jonathan Cole’s backyard. That’s a total of 729 grams and---729.40 grams of cocaine. Cocaine based, we’ve got 4.57 grams from Tevin Green, 12.16 grams from Curtis Davenport, that only equals 16.73 grams. Courtnege Burriss had 45.4 grams cocaine based in that book bag. Mr. Burriss was too scared to testify about that.

DEFENSE COUNSEL: Judge, I’m going to object to that characterization for the record. He specifically said “I plead the Fifth. I’m not scared. I ain’t got nothing to do. This is my own game.” That’s a mischaracterization for the record.

SOLICITOR: Moving on. We have methamphetamine, 8.92 grams from Tevin Green, 227 grams from Bryan Scarborough. Shana testified that she didn't weigh—weigh all of that. We have 152.4 grams from Curtis Davenport. We have 79.39 grams from Anthony Clarkson. That's a total of 468.23 grams of methamphetamine in evidence. Fentanyl, the most dangerous drug out there, 24.07 grams from Curtis Davenport, 27.34 grams from Marlo Jackson, which was sold as heroin, 1.437 grams from Jonathan Cole, equaling 1.488 grams of Fentanyl. These people can't accomplish their goal of selling drugs and making money without each other. You've got to have somebody to sell it to, and that person has to have somebody else to sell it to, and so on and so forth. And that is no agreement.

Tr. 262, 1.2-p. 263, 1.6.

During closing arguments, a solicitor's comments must remain confined to the evidence within the record or any reasonable inferences that might be drawn therefrom. Washington v. State, 440 S.C. 530, 891 S.E.2d 668 (2023). Also, see the Court's holding in Fortune v. State, 428 S.C. 545, 837 S.E.2d 37 (2019), regarding the matter as follows:

The Due Process Clauses in both the Fifth and Fourteenth Amendments provide that no person may be deprived of liberty "without due process of law." U.S. CONST. amend. V; *id.* Amend. XIV, § 1. To find whether the assistant solicitor's comments in closing argument violated the defendant's due process rights, we must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464, 2471, 91 L. Ed. 2d 144, 157 (1986) ("The relevant question is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 643, 94 S. Ct. 1868, 1871, 40 L. Ed. 2d 431, 437 (1974))); United States v. Charman, 910 F.2d 102, 113 (4th Cir. 1990) (stating "the test for reversible prosecutorial misconduct" in a prosecutor's closing argument is "the prosecutor's remarks or conduct must in fact have been improper, and...such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the defendant of a fair trial" (citation omitted)). As this Court has stated,

Clearly, the unfavorable inference certainly reached based on the solicitor's comment in question was that a possible threat delivered to state's witness Burriss occurred prior to trial along with the insinuation that such a threat could somehow be assigned as coming from appellant, which in turn resulted in the underlying suggestion that this was how drug dealers operated in order to thwart the production of evidence that might corroborate or establish guilt on drug charges. This type of negative assertion and/or suggestion raised based on the solicitor's comment at issue prejudiced appellant's defense as it infected the trial with sufficient unfairness as to deny appellant a fair trial. The trial judge erred in allowing the solicitor to make such an improper closing statement to the jury.

CONCLUSION

Based on the foregoing argument, the undersigned counsel would request that appellant's case be reversed and remanded to the lower court for a new proceeding.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of April, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marlo Jackson states:

1. She is Chief 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 Paul M. Burch, which was held on March 24-28, 2025, 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 Marlo Jackson.

Respectfully Submitted,



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of April, 2026.

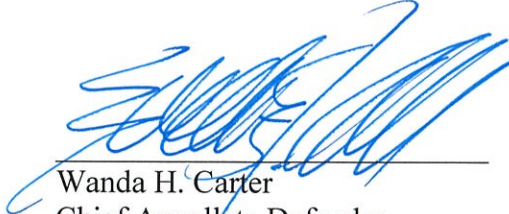
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CERTIFICATE OF COUNSEL

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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