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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Heath P. Taylor, Circuit Court Judge

Case No. 2025-000484

State of South Carolina,

Respondent,

v.

Jaquan L. King,

Appellant.

APPELLANT'S REPLY BRIEF

INTRODUCTION

The State's response confirms why Issue IV warrants this Court's principal attention. The solicitor did not simply answer a complaint that the State spent too much time proving the Ford Fusion was Mr. King's car. The solicitor went further and urged the jury to ask why Mr. King's family would not "admit" the car was his, would not say who was driving it, and would not say where he was that night. That argument told the jury to treat silence, non-cooperation, and the absence of defense evidence as proof of guilt. That is burden shifting. It is also constitutionally

impermissible. *State v. Hamilton*, 344 S.C. 344, 352–53, 543 S.E.2d 586, 591–92 (Ct. App. 2001); *State v. Johnson*, 293 S.C. 321, 323, 360 S.E.2d 317, 319 (1987); *Griffin v. California*, 380 U.S. 609, 614–15 (1965).

The State’s preservation argument also fails. Defense counsel objected at the very moment the solicitor crossed that line, and the ground for the objection was apparent from the context of the argument then unfolding before the jury. Rule 103(a)(1), SCRE; *State v. Hamilton*, 344 S.C. 344, 349–53, 543 S.E.2d 586, 589–92 (Ct. App. 2001). The convictions should be reversed and the case remanded for a new trial.

ARGUMENT

I. Issue IV was preserved because the basis for the objection was apparent from the context.

The State treats the sidebar as if it occurred in a vacuum. It did not. The solicitor had just argued to the jury: “why wouldn’t he ever admit,” “why wouldn’t his family ever admit that was his car,” and then continued with the same theme by asking why Jack King and Ashley Walcott would not explain who drove the car and why Ashley would not say where Mr. King was. Defense counsel objected immediately and asked to approach “as a matter of law.” On this record, the point of objection was plain: the State was telling the jury that Mr. King and his family had a duty to supply incriminating admissions and exculpatory details the State itself had not proven. Rule 103(a)(1), SCRE; *State v. Hamilton*, 344 S.C. 344, 349–53, 543 S.E.2d 586, 589–92 (Ct. App. 2001).

That is why this case is unlike *York*. In *York*, the problem was that the record did not reveal the substance of the objection at all. Here, the objection arose in direct response to a specific, legally identifiable line of prosecutorial argument heard by the jury and reflected in the

transcript. *York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997); *State v. Hamilton*, 344 S.C. 344, 360–61, 543 S.E.2d 586, 595 (Ct. App. 2001).

The comments after sidebar were not a separate argument requiring a second objection. They were the same argument, sharpened and repeated. The solicitor returned to the same theme—why family members would not say whose car it was, who was driving it, and where Mr. King was—and pressed the jury to treat that silence as suspicious. Once the legal ground had been made plain, Rule 103 did not require counsel to keep interrupting a continuing constitutional violation. Rule 103(a)(1), SCRE; *State v. Hamilton*, 344 S.C. 344, 349–53, 543 S.E.2d 586, 589–92 (Ct. App. 2001).

And even if this Court concludes preservation was imperfect, this is still the type of extraordinary closing-argument error appellate courts may correct because it strikes at the burden of proof and the privilege against self-incrimination. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994); *Fortune v. State*, 428 S.C. 545, 554–55, 836 S.E.2d 802, 807–08 (2019).

II. The State’s rebuttal was not fair reply; it was burden shifting.

The State tries to recast the rebuttal as a narrow response to defense counsel’s point that the prosecution spent an “entire afternoon” proving the Fusion was Mr. King’s car. But that is not what the solicitor argued. The solicitor did not stop at saying the State had to prove ownership or use of the car. He asked why Mr. King and his family would not “admit” it, why they would not identify the driver, and why they would not tell where he was that night. That argument did not address the sufficiency of the State’s proof. It attacked the defense for not filling holes in it. *State v. Hamilton*, 344 S.C. 344, 352–53, 543 S.E.2d 586, 591–92 (Ct. App. 2001); *State v. Johnson*, 293 S.C. 321, 323, 360 S.E.2d 317, 319 (1987).

That is classic burden shifting. A criminal defendant has no duty to admit ownership, identify a driver, explain his whereabouts, call witnesses, or present an alibi. The entire burden remains with the State. When the solicitor urged the jury to draw adverse inferences from the failure of Mr. King or his family to provide those answers, the State asked the jury to convict because the defense had not helped the prosecution prove its case. That is precisely what South Carolina law forbids. *State v. Hamilton*, 344 S.C. 344, 352–53, 543 S.E.2d 586, 591–92 (Ct. App. 2001); *State v. Johnson*, 293 S.C. 321, 323, 360 S.E.2d 317, 319 (1987).

The State’s reliance on its own references to burden before and after the misconduct does not save the argument. A prosecutor cannot sanitize burden shifting by wrapping it in the correct words. The vice lies in what the jury was told to do: infer guilt from silence, non-cooperation, and the absence of defense evidence. Saying “the State has the burden” before and after inviting that forbidden inference does not undo the invitation. *Fortune v. State*, 428 S.C. 545, 554–55, 836 S.E.2d 802, 807–08 (2019); *Griffin v. California*, 380 U.S. 609, 614–15 (1965).

Nor was this fair reply to defense counsel’s closing. Defense counsel argued exactly what she was entitled to argue: that the burden never shifted and that the State had failed to prove identity beyond a reasonable doubt. A defendant’s insistence that the State meet its burden does not open the door for the prosecutor to argue that the defendant should have supplied the missing proof. *United States v. Young*, 470 U.S. 1 (1985); *United States v. Robinson*, 485 U.S. 25 (1988); *State v. Hamilton*, 344 S.C. 344, 352–53, 543 S.E.2d 586, 591–92 (Ct. App. 2001).

III. This error was devastating because it went to the core issues and was not cured.

The State’s remarks did not concern some collateral matter. They went directly to the central disputed issues: whether the Fusion was connected to Mr. King, whether he was the person tied to it, and where he was at the critical time. By telling jurors to ask why the family

would not “admit” those facts or explain his whereabouts, the solicitor converted evidentiary gaps into affirmative proof of guilt. That is the kind of argument that undermines the presumption of innocence itself. *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166–67 (1998); *State v. Hamilton*, 344 S.C. 344, 352–53, 543 S.E.2d 586, 591 (Ct. App. 2001).

This was not a passing misstatement. It was a theme. The solicitor returned to it repeatedly and framed the family’s silence and non-cooperation as something the jury should hold against Mr. King. Repetition matters, especially when the argument invites the jury to use the absence of defense evidence as a reason to convict. *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166–67 (1998); *Fortune v. State*, 428 S.C. 545, 554–55, 836 S.E.2d 802, 807–08 (2019).

Most importantly, this kind of argument is not cured by generic references to the State’s burden. Once the jury is told that guilt may be inferred from the defendant’s failure, or his family’s failure, to explain, admit, or supply an alibi, the burden has been impermissibly recast in the jury room. That bell cannot be unrung by boilerplate. The prosecutor’s special obligation is to avoid exactly that kind of foul blow. *Berger v. United States*, 295 U.S. 78, 88 (1935); *Fortune v. State*, 428 S.C. 545, 554–55, 836 S.E.2d 802, 807–08 (2019).

Under South Carolina and federal due-process standards, the question is whether the solicitor’s comments so infected the trial with unfairness as to deny due process. Here, where the comments targeted the decisive issues and invited conviction on an unconstitutional basis, the answer is yes. *Darden v. Wainwright*, 477 U.S. 168, 181 (1986); *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974); *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166–67 (1998); *State v. Hamilton*, 344 S.C. 344, 352–53, 543 S.E.2d 586, 591–92 (Ct. App. 2001).

IV. The remaining issues remain preserved for review and support relief.

Appellant relies on the arguments in his opening brief as to Issues I through III and submits only these brief points in reply.

As to Issue I, the State's response addresses each missing item of evidence in isolation, but the prejudice arose from the combined investigative gaps, including missing body-camera material, unavailable surveillance footage, and lost interview notes. The cumulative effect remains the proper lens for review under the authorities cited in Appellant's opening brief.

As to Issue II, the State answers a different argument than the one raised. Appellant did not dispute the ordinary proposition that a witness may authenticate a photograph she took. The point was that this image was used as a crucial investigative springboard despite the reliability concerns surrounding its circulation and corroboration, which go to far more than a routine foundation objection.

As to Issue III, Appellant acknowledges the State's preservation attack but maintains the constitutional challenge was placed before the trial court during the pretrial suppression proceedings. At minimum, if this Court concludes the present record is not sufficient to decide the validity of the search on the merits, that insufficiency should not become an automatic affirmance where the issue was squarely identified before trial.

CONCLUSION

For these reasons, and for the reasons set out in the opening brief, Appellant respectfully requests that this Court reverse his convictions and remand for a new trial.

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