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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Honorable George M. McFaddin, Circuit Court Judge

WILLIAM J. BRUNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000522

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred by refusing to find trial counsel ineffective for failing to object to the trial court's charge to the jury that it was their duty to determine the "truth of the evidence," where the charge diluted the state's burden of proof, and petitioner was thus prejudiced as a result of trial counsel's deficient performance?

STATEMENT

In August of 2019, the Darlington County grand jury indicted petitioner for burglary first degree. App. 278-279. On August 26, 2019, petitioner proceeded to trial before the Honorable Thomas Russo and a jury. App. 1. Elaine Cooke and Monty Bell represented the state, and Rachel Gainey represented petitioner. App. 1. Petitioner was tried in his absence. App. 39, l. 2 – 41, l. 9; 54, l. 2 – 56, l. 19. The jury ultimately found petitioner guilty as indicted. App. 138, l. 21 – 139, l. 4. On August 28, 2019, a sentencing hearing was held for petitioner wherein Judge Russon imposed the sealed 24 years' imprisonment sentence. App. 147, ll. 18-23.

On February 28, 2022, petitioner filed an application for post-conviction relief (PCR). App. 152-160. On June 1, 2022, the state filed a return and motion for a more definite statement. App. 161-176. On December 10, 2024, an evidentiary hearing was held before the Honorable George M. McFaddin, Jr. App. 177-241. Ashley A. McMahan represented petitioner and D. Russell Barlow, II, represented the state. App. 177. On February 23, 2026, Judge McFaddin signed an order denying PCR and dismissing petitioner's application with prejudice. App. 242-269. Petitioner filed a notice of appeal. App. 270.

This petition follows.

ARGUMENT

The PCR court erred by refusing to find trial counsel ineffective for failing to object to the trial court's charge to the jury that it was their duty to determine the "truth of the evidence," where the charge diluted the state's burden of proof, and petitioner was thus prejudiced as a result of trial counsel's deficient performance.

Relevant facts

Trial

After the parties rested their cases, the trial court instructed the jury on the law. App. 119, l. 21. The trial court charged the jury that petitioner was presumed innocent of the crime in the indictment unless guilt had been proven by evidence satisfying guilt beyond a reasonable double. App. 121, ll. 2-18. The trial court charged the jury that reasonable doubt was "proof that leaves you firmly convince[d] of the defendant's guilt." App. 121, l. 18 – 122, l. 2. The trial court then charged the jury as follows,

As I told you at the start of this case the jury is the sole and exclusive judge of the facts. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors it's your duty to determine the effect, value, weight, and *truth of the evidence that was presented during the course of this trial.*

* * *

It becomes your duty as jurors to analyze and evaluate the evidence and to *determine which evidence convinces you of its truth.*

* * *

You do not, however, *determine the truth* merely by counting the number of witnesses presented by each side.

App. 122, l. 23 – 123, l. 20 (emphasis added). The trial court continued by charging the jury that there were generally two types of evidence presented in a criminal case, direct and circumstantial evidence, and provided definitions for both. App. 123, l. 21 – 124, l. 18. The court instructed the jury that petitioner's absence and the fact that he did not testify could not be considered during deliberations as to his guilt or innocence. App. 124, ll. 19-25. The court instructed the jury as to the elements of burglary in the first-degree. App. 125, l. 14 – 127, l. 16. The court elicited objections, and trial counsel made no objection to the jury charge. App. 136, ll. 5-6.

Evidentiary hearing

During his evidentiary hearing, petitioner testified that the trial court instructed the jury to determine the case based on the evidence, but the only evidence presented was from the state. App. 196, ll. 13-18. He testified that the jury should determine the case based on whether the state could prove their case beyond a reasonable doubt as to each element of the crime. App. 197, ll. 11-13. On cross-examination, regarding the jury instructions, petitioner testified that "if you [were] aware of the evidence, you would have put up a defense." App. 210, ll. 11-14. Trial counsel testified that she had a conversation with petitioner about his right to testify, but petitioner did not want to testify because of the implications of his record. App. 228, ll. 4-8.

At the conclusion of the hearing, the PCR court stated that it would not grant a new trial. App. 237, ll. 10-12. As to the jury instructions, the court explained that petitioner had no duty to present any evidence. App. 239, ll. 15-18. The PCR court determined that petitioner did not meet his burden of proof to show that he was entitled to a new trial. App. 239, ll. 20-25.

The PCR court's ruling

In the order of dismissal, the PCR court found that petitioner failed to establish any deficiency by trial counsel for failing to object to the challenged jury instruction or any prejudice

flowing therefrom. App. 264. The PCR court determined that the challenged jury instruction “did not unconstitutionally shift the burden of proof, and it is not reasonably likely that outcome would have been different without the foregoing ‘truth’ language.” App. 263-264. The PCR court also determined that the “truth” language occurred during the charge on witness credibility, and thus, under our caselaw did not unconstitutionally shift the burden of proof or constitute reversible error. App. 264 (citing *State v. Beaty*, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018)). Moreover, the PCR court found that petitioner failed to prove any prejudice from the “truth” language in the witness credibility charge because “the jury was (1) prefaced by a full and proper instruction on reasonable doubt, (2) it was not given in either the reasonable doubt or circumstantial evidence charges, and (3) was given in the context of the jury’s role as fact finder and determiner of witness credibility.” App. 264. Therefore, the PCR court concluded that the allegation must be denied and dismissed with prejudice. App. 264.

Discussion

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). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and that the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687. Under the second prong, petitioner must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different.” *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the

outcome of the trial.” *Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (citing *Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016)).

“[A] trial [court] should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.” *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. Specifically, “[t]hese phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice.” *Id.* Importantly, the *Beaty* Court instructed “trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State had proven the defendant’s guilt beyond a reasonable doubt.” *Id.*; *see also State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867-68 (1998) (advising circuit courts to avoid “in search of truth” language in the definition of reasonable doubt because it “runs the risk of unconstitutionally shifting the burden of proof to a defendant”), *modified on other grounds by State v. Cherry*, 361 S.C. 588, 605 S.E.2d 475 (2004).

In *State v. Aleksey*, 343 S.C. 20, 26, 538 S.E.2d 248, 251 (2000),¹ the trial judge, at the close of the instruction on determining the credibility of witnesses, told the jury:

Obviously you do not determine the truth or falsity of a matter by counting up the number of witnesses who may have testified on one side or the other. Ladies and gentlemen, throughout this entire process, you have but one single objective, and that is to seek the truth, to seek the truth regardless of from what source that truth may be derived. Now, all of these things, ladies and gentlemen, you will consider, bearing in mind that you must give the defendant the benefit of every reasonable doubt.

¹ The *Aleksey* Court also determined that the standard of review for an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution. *Id.* at 27, 538 S.E.2d at 251.

Aleksey challenged the instruction on appeal. The South Carolina Supreme Court in *Aleksey* wrote, “Jury instructions on reasonable doubt which charge the jury to ‘seek the truth’ are disfavored because they ‘[run] the risk of unconstitutionally shifting the burden of proof to a defendant.’ *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998).” *Id.* at 26–27, 538 S.E.2d at 251. The instruction in *Aleksey* involved credibility of witnesses rather than reasonable doubt. The Court wrote:

While we have urged trial courts to avoid using any “seek” language when charging jurors on either reasonable doubt or circumstantial evidence (*see State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)), the “seek” language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility. Both the reasonable doubt and circumstantial evidence charges were complete and proper.

Id. at 27, 538 S.E.2d at 251–52. The *Aleksey* Court affirmed finding the instruction as a whole properly conveyed the law to the jury and there was not a reasonable likelihood the jury applied the judge’s instructions to convict appellant on less than proof beyond a reasonable doubt.

In *State v. Patterson*, 425 S.C. 500, 823 S.E.2d 217 (Ct. App. 2019), the trial court made opening remarks to the jury regarding the trial being a “search from the truth.” The South Carolina Court of Appeals noted that “[o]ur supreme court has consistently cautioned against using language that suggests the object of a trial is to find ‘the truth.’” *Id.* at 511, 823 S.E.2d at 223. Our Court of Appeals determined that the trial court’s remarks were error, however, the errors did not warrant reversal because the improper comments came at the beginning of the trial rather than during the charge on the state’s burden of proof. *Id.* at 511–512, 823 S.E.2d at 224.

In petitioner’s case, the PCR court erred by refusing to find trial counsel rendered ineffective assistance of counsel where counsel failed to object to the trial court’s jury instructions which included improper “truth” language. Specifically, the trial court instructed the

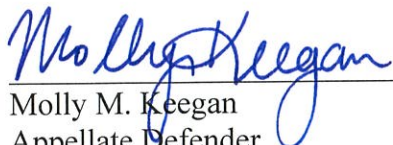
jury three times that it must determine the “truth of the evidence,” it must “determine which evidence convinces you of its truth,” and that it could not “determine the truth,” from the number of witnesses presented. App. 122, l. 23 – 123, l. 20. The trial court elicited objections, but trial counsel did not object. App. 136, ll. 5-6. It is well established that, “a trial [court] should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.” *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. Although the trial court’s “truth” language occurred during its instruction concerning witness credibility, *see generally Aleksey*, 343 S.C. 20, 538 S.E.2d 248, our Courts have nonetheless urged trial courts to avoid using this type of language in their jury instructions to avoid unconstitutionally shifting the burden of proof to a defendant, *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506; *Patterson*, 425 S.C. at 511-512, 823 S.E.2d at 224. Therefore, the PCR court erred by determining that petitioner failed to establish deficient performance by trial counsel for failing to object to the improper jury instruction. App. 271; *Strickland*, 466 U.S. at 687.

Petitioner was also prejudiced by trial counsel’s deficient performance. Petitioner’s jury was instructed three times regarding its duty to determine the truth. In doing so, the trial court employed language that runs the risk of unconstitutionally shifting the burden of proof to petitioner as “[t]hese phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice.” *See Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. While the trial court’s “truth” language came during its instruction on witness credibility, it directly followed the charge on reasonable doubt. App. 121, l. 18 – 122, l. 2; App. 122, l. 23 – 123, l. 20. There is a reasonable probability that the trial court’s emphasis to the jury to find the truth in the evidence diverted the jury from its obligation

to determine whether the state had proven petitioner guilty beyond a reasonable doubt. *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506; *Needs*, 333 S.C. at 155, 508 S.E.2d at 867-68. Thus, the PCR court erred by finding that petitioner failed to prove prejudice flowing from the trial court's improper use of "truth language," and from trial counsel's deficient performance by failing to object. App. 264; *Strickland*, 466 U.S. at 688.

CONCLUSION

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


Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of July, 2026.

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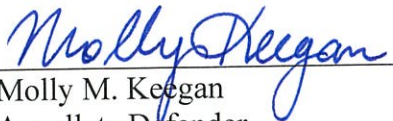
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Johnathan Brunson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on December 10, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for William Johnathan Brunson.

Respectfully Submitted,



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of July, 2026.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this *Johnson* Petition for Writ of Certiorari 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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