ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Clifton Newman, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MARTIN DIXON,

APPELLANT

Opinion No. 2026-UP-395 (S.C. Ct. App. Filed August 5, 2026)

APPELLATE CASE NO. 2023-000597

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on October 13, 2026.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in failing to reverse when a trial judge violates a criminal defendant's due process right to an impartial tribunal by actively encouraging an indicted codefendant to waive her Fifth Amendment privilege and testify for the prosecution against the advice of her attorney?

2. Whether the Court of Appeals erred in holding a criminal defendant must identify a specific adverse ruling or sentencing decision to establish constitutionally disqualifying judicial bias when the presiding judge expressly states that he is more willing to imprison men than women?

STATEMENT OF THE CASE

Petitioner Martin Dixon was indicted for kidnapping, attempted murder, and arson by a Richland County grand jury on July 15, 2020. R. 736-739. The arson indictment was not called to trial due to a defect in its language. R. 7, l. 1 – 8, l. 15. Petitioner was tried before the Honorable Clifton B. Newman (hereinafter the court) and a jury from April 3 – 6, 2023. At trial, Petitioner was represented by Aimee Zmroczek. Dale Scott and John Whitmire represented the state.

As part of the State's case in chief, co-defendant Michelle Jones testified on behalf of the State. R. 393. The trial judge conducted extensive questioning of codefendant Jones leading up to her decision to waive her privilege against self-incrimination and take the stand against the advice of her counsel. R. 233 – 256. The conduct of the trial judge during this colloquy and during the motions that followed, conducted outside the presence of the jury, formed the basis for the arguments presented to the Court of Appeals.

On April 6, 2023, the jury convicted Petitioner of kidnapping and attempted murder. Judge Newman sentenced Petitioner to twenty-three years on each charge, concurrent with credit for time served. R. 735, ll. 1 – 7.

Petitioner asserted two issues surrounding the conduct of the trial judge towards codefendant Jones. In the first issue, Petitioner asked the Court of Appeals if "a trial judge that actively advocates and pressures a codefendant to testify and waive their right to remain silent assume the role of advocate for the prosecution in violation of the due process rights of an accused requiring the grant of a mistrial and recusal?" In the second issue, Petitioner asked the Court of Appeals if a "trial before a judge who admitted he would discriminate in sentencing

based upon the difference in gender between appellant and codefendant a violation of appellant's due process right to a fair trial?"

The Court of Appeals denied relief as to either issue in an unpublished opinion. *See* State v. Dixon, Unpublished Opinion No. 2026-UP-395 (filed August 5, 2026). In its opinion, the Court of Appeals found no error in the trial court's conduct since codefendant Jones "had pending charges stemming from the incident and she had mental health issues, a low IQ, and difficulty understanding legal concepts; accordingly, the court had a legitimate basis to ensure the co-conspirator understood her rights, her pending charges, and the consequences of invoking the Fifth Amendment." In addition, the Court of Appeals found that since the colloquy occurred outside the presence of the jury, Petitioner could not demonstrate the required prejudice to support a motion for a mistrial and recusal. State v. Dixon, Unpublished Opinion No. 2026-UP-395 (filed August 5, 2026). As to the impact of the trial judge's statements concerning treatment of those with different genders, the Court of Appeals noted:

> Although we are concerned by the court's comment that it would "put a guy in prison a lot faster than [it would] put a woman in prison," Dixon did not identify any ruling or sentence affected by bias. Thus, considering the colloquy as a whole, we hold that Dixon has not demonstrated that the trial court abused its discretion in denying his motion for recusal.

State v. Dixon, Unpublished Opinion No. 2026-UP-395 (filed August 5, 2026).

This Petition for certiorari follows seeking review by this Court as to both issues raised before the Court of Appeals.

ARGUMENTS

I. The Court of Appeals erred in failing to reverse when the trial judge violates a criminal defendant's due process right to an impartial tribunal by actively encouraging an indicted codefendant to waive her Fifth Amendment privilege and testify for the prosecution against the advice of her attorney.

A. Relevant facts.

At the time of trial, codefendant Michelle Jones was facing the same criminal charges as Petitioner, but her case had not yet been called to trial. The solicitor told the trial court they intended to call Jones to testify as a witness in Petitioner's case, and if she "didn't play along" they would set her trial immediately. R. 42, l. 23 – 43, l. 6. Jones was represented by Robert Forney. R. 42, ll. 2 – 10. Forney told the court that his client was mentally ill, had a low IQ, and would struggle with the court's competency questions in connection with her right to refuse to testify. R. 231, ll. 7 – 19. The court informed Forney that he "knew how to handle" Jones. R. 231, ll. 20 – 24.

The court then actively pressured Jones to waive her Fifth Amendment assertion and testify on behalf of the state. Initially, the court questioned Jones about her background and family, finding some interest in her relation to Nelson Rivers.[1] R. 234, l. 1 – 236, l. 18. The court then asked the direct question required:

> THE COURT: And the solicitor wanted me to ask you whether or not you plan to testify in this case.
>
> MS. JONES: I plead the Fifth. No answer.
>
> THE COURT: "I plead the Fifth. No answer." How did you figure that out?

[1]The court used Nelson Rivers, a minister at Royal Baptist Church in Charleston, as another source of potential advice to convince Jones to testify. "So I might call Nelson and say, 'Nelson, what do you want me to do with your people?'" R. 247, ll. 6 – 19.

R. 236, l. 25 – 237, l. 12. This should have ended the inquiry. Instead, the trial court inquired into the details of Jones' medication and mental health history. R. 238, l. 5 – 24. After a discussion on Jones' competency evaluation and the proper role of the court and the lawyers involved, the court indicated he believed Jones's mental health had improved based upon his conversation with her to that point. R. 241, ll. 2 – 16. Forney explained his concerns about the length of time since Jones' evaluation and her low intelligence and difficulty understanding legal concepts. R. 241, ll. 17 – 25.

In response to the trial court's inquiry about whether a plea offer for testimony had been arranged, the solicitor indicated:

> *It was always sort of my understanding that she would be testifying as a state's witness and then -- I don't know.* This was scheduled February 20 for trial, and maybe a week or two beforehand Mr. Forney indicated that she would be pleading the Fifth under his advisement. Now I just want to make sure everybody is of the same understanding that I will be moving to put her on the trial docket as soon as possible.

R. 243, ll. 2 – 10 (emphasis added). The trial court warned both Petitioner and Jones of the danger inherent in a jury trial and the danger of a long prison sentence. R. 243, l. 25 – 244, l. 12. The court then involved Jones' aunt, Beverly Rivers, in the discussion:

> THE COURT: I'm talking to Ms. Beverly Rivers more than anyone else in here today because, yeah, you can just say, "I want a jury trial. I'm pleading the Fifth. I'm not going to say anything." And when you have a jury trial, you don't have to testify. *You can take the Fifth, and Mr. Scott* [the solicitor], *he doesn't -- I mean, he -- he would love to -- obviously he picked out the guy he thinks is most guilty and put him on trial.* And you can want a trial but, you know, you – *you might want to consider trying to figure out how to get out of this jam that you're in.*

R. 244, l. 20 – 245, l. 6 (emphasis added).

The court then told Jones that she was likely not really responsible for anything despite the fact that the victim DuBose had already testified to the jury that Jones both kicked and punched him. R. 182, ll. 3 - 23.

> I don't know what her degree of culpability is. It's hard for me to believe that she would've -- she would've beaten the man in the head and forced him in the trunk and all that stuff. Sounds like she was just the third wheel here.[2]

R. 245, ll. 7 – 12.

The court then focused on the dangers of Jones going to trial and not working out a deal, even implying there would not be a prison sentence for her if she cooperated, and encouraged Jones' relatives to apply additional pressure.

> THE COURT: Well, you can have all these trials, and people can end up in prison for a long period of time, *or you can figure out a way that you can try to get out of this. And, of course, I'm not -- you know, I'll put a guy in prison a lot faster than I'll put a woman in prison, especially a woman that has three children.* And I'm not saying whatever should be an end result. But it's so easy to say, "Well, I'm going to take the Fifth. I'm not going to cooperate. I want me a jury trial. I'm thinking this is just going to go away." And then you have a jury trial. If you get found guilty, then you have some serious problems.
>
> Ms. Beverly Rivers, and if she's got problems, you've got problems. And so you-all need to think hard.

R. 245, l. 24 – 246, l. 15 (emphasis added). The court told Jones that testifying in Petitioner's case would not make an impact but would "make a whole lot of difference in your case, because it sounds like you're in a lot of trouble too." R. 248, ll. 2 – 5.

After Jones' counsel indicated there had been no plea offer from the solicitor's office, the court stepped in again to advocate for Jones to waive her rights and testify.

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[2]This lack of individual culpability ultimately mirrored the version of events Jones relayed to the jury, blaming Petitioner for the criminal actions and indicating she was forced to participate. R. 411, ll. 11 – 17.

> THE COURT: Yeah. You know, whatever y'all want to do. But this is a case from 2019. We've got a jury out, and we've got all these people here from Charleston. And if you all want to figure out what to do -- Mr. Scott [solicitor] can't handle two cases simultaneously. I mean, it seems as if y'all would have been thinking on this already. You know what I mean, Ms. Rivers -- Ms. Jones, you know what I mean, right?
>
> A lot of people who -- everyone loves to say, well, this person's incompetent. They don't have good sense. You know, all of us have in a lot of ways the same amount of sense. You know, we all have positives and negatives.
>
> And just like Mr. -- Mr. Victim there, Mr. Dubose, he has good sense, but you've got to pull it out of him.
>
> Then Mr. Defendant here, Mr. Dixon, claimed he didn't understand anything. He's got good sense. *So, y'all better figure these cases out because Mr. Scott will go one after the other. He'll call these cases, and either you're guilty or not guilty. But if you're guilty, you know, then the judge is ready to throw the hammer or do whatever. But you're facing a lot of time.*

R. 248, l. 9 – 249, l. 8 (emphasis added).

The court then called on DuBose to present additional testimony regarding the culpability of Jones even though he had already been called as a witness and testified under oath. R. 249, l. 15 – 250, l. 11. In response to Forney's objection, the court questioned his professionalism and advice in front of Jones:

> That's what I'm saying. You know, *you come in with all the lawyering and end up lawyering so much that your client is in prison, and you're back home.* You need to make some wise decisions in dealing with representing these people. It's not about the technicalities of this and the technicalities of that. *It's about the future of these people who are being placed on trial and who sometimes end up getting the short end of the stick because of this over lawyering.* That's the way I see it.

R. 250, l. 23 – 251, l. 8 (emphasis added).

When Forney told the court the solicitor had made no offers, the court indicated that "the whole notion that the solicitor has to go around begging people to cooperate -- sometimes the lawyer needs to be begging the solicitor to let them cooperate for the benefit of their own client." R. 251, ll. 21 – 25. The court then referenced another client of Petitioner's own counsel (Aimee Zmroczek) who was cooperating with the state in connection with the various Murdaugh trials and that it was "good lawyering" for Petitioner's counsel to seek to cut a deal with the solicitor. R. 252, l. 2 – 14. Once again applying pressure to Jones' family, the court told Beverly Rivers:

> THE COURT: That's why I'm saying I'm talking to you more than anyone else and your husband and everybody else, because you have to make family decisions on these things. And Mr. Forney has come and gone out and comein and gone out, and now it's your turn to go out and deal with your client and figure out what, if anything, y'all can do with this case because I won't be the judge, chances are. I'm just here on this case with Mr. Dixon at this time. And it doesn't matter to me whether this lady testifies or not. It doesn't matter to me whether she has a jury trial or not. But my interest is that these *people who are being accused and who come in with lawyers who try to do lawyer-y things so much so in a lot of instances that their clients get the short end of the stick.* And I don't want this lady here, Ms. Jones, to get the short end of this stick unless she deserves to get it. And that's all I'm going to say.

R. 252, l. 19 – 253, l. 13 (emphasis added).[3]

The court then inquired when Jones could be set for trial, with the solicitor indicating they could try her the next day. R. 254, ll. 7 – 22. When Forney provided information to help with scheduling Jones' trial, the court questioned his veracity.[4]

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[3] With this interaction with Jones' family, the trial court was effectively was providing legal advice to Jones in contravention to that of her attorney and interjecting family members to serve as additional leverage supporting the trial court's legal advice to Jones.

[4] The trial court indicated disbelief at Forney's trial schedule, indicating "And I'm going to -- I'm going to monitor -- have my clerk monitor the schedule and see how many of those trials you actually did during, based on what you've just told me, you have scheduled." R. 255, ll. 1 – 5.

After the court's heavy-handed efforts to assist the state in pressuring Jones to testify and the court's statements of bias, Petitioner's trial counsel moved for either a mistrial or for recusal. R. 360, l. 7 – 361, l. 19; 379, ll. 10 - 21. The trial court denied both motions. R. 378, ll. 4 – 12; 380, ll. 7 – 22.

B. Argument.

"A fundamental concept of our system of justice is that every person charged with a crime has an absolute right to a fair and impartial trial." State v. Kennedy, 272 S.C. 231, 234, 250 S.E.2d 338, 339 (1978). "A criminal defendant has a due process right to have his case heard by a fair and impartial judge." State v. Langford, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012). "It is well settled that a trial judge must act with absolute impartiality in the performance of judicial duties." State v. Cooper, 334 S.C. 540, 546, 514 S.E.2d 584, 587 (1999); *see also* State v. Campbell, 297 S.C. 24, 26, 374 S.E.2d 668, 668–69 (1988) (holding the basis for judges not commenting on the facts is "founded upon the concept of our system of justice that every person charged with a crime has the right to a fair and impartial trial and that such a trial may only be achieved with the neutrality of the trial judge."); State v. Ates, 297 S.C. 316, 317–18, 377 S.E.2d 98, 99 (1989) (holding a trial judge "must refrain from all comment which tends to indicate his opinion on the weight or sufficiency of evidence, the credibility of witnesses, the guilt of the accused, or the facts in controversy."); Barnes v. Jones Chevrolet Co., 292 S.C. 607, 610, 358 S.E.2d 156, 158 (Ct. App. 1987) (holding "that in the management and control of a trial, the trial judge should avoid intemperate language, both in what he says and how he says it; constant vigilance in avoiding the appearance of partiality, anger, and impatience is required of trial judges who should be conscious at all times that the high office of a judge of the Court of Common Pleas requires a temperament consonant with the high calling of the judiciary.").

There is substantial danger when the trial court steps away from its role as a neutral and becomes actively involved in the adversarial process even when the conduct takes place outside the presence of the jury. This danger can be seen in judicial involvement in plea negotiations. *See* United States v. Kyle, 734 F.3d 956, 965–66 (9th Cir. 2013) (*quoting* United States v. Kraus, 137 F.3d 447 (7th Cir. 1998)) (Noting that judicial remarks directed to future or ongoing plea negotiations which "suggest what will satisfy the court" transform the court "from an impartial arbiter to a participant in the plea negotiations."). A trial judge that takes an active, adversarial role in convincing a codefendant to waive their right to remain silent and testify against an accused has transformed the court from an impartial arbiter to an active and adversarial party in the criminal prosecution. *See* United States v. Kyle, 734 F.3d 956, 965–66 (9th Cir. 2013).

It is also improper for a trial judge to assume the role of advocate on behalf of the prosecution, impacting both the due process rights of the accused and the public's perception of the court as neutral. *See* Archer v. State, 383 Md. 329, 347, 859 A.2d 210, 221 (2004) ("The trial judge departed from a neutral judicial role and acted as an advocate in expressing an opinion to [witness] about how he could testify."); People v. Blalock, 239 Ill. App. 3d 830, 836, 607 N.E.2d 645, 649 (1993) (finding it was "inappropriate for the trial judge repeatedly to inform the witness of [the right to remain silent] and editorialize that testifying would be foolish").

This Court has also cautioned trial courts to avoid providing their personal opinions about the wisdom of waiving important rights. *See* State v. Gunter, 286 S.C. 556, 559, 335 S.E.2d 542, 543 (1985) ("Before a defendant testifies, the trial judge may establish that he understands his Fifth Amendment privilege by fully advising him of his right to testify or not to testify. *This inquiry must be limited in scope, and it is impermissible for the judge to express his opinion, although the opinion may be based upon his experience and best judgment.*") (emphasis added).

The inherent danger of the improper influence of trial judge's personal opinion on waiving fundamental rights typically warrants reversal even absent a showing of prejudice. *See* Butler v. State, 302 S.C. 466, 467, 397 S.E.2d 87, 87 (1990); State v. Pierce, 289 S.C. 430, 346 S.E.2d 707 (1986), State v. Cooper, 291 S.C. 332, 353 S.E.2d 441 (1986). For example, in Pierce, this Court reversed where the trial judge told a capital defendant that while the jury could not hold it against him if he did not testify: "I am going to charge [the jury] that the law does not permit them to hold it against you, but they are human beings and you know and I know that any twelve people who have been called upon to resolve some dispute cannot help but have it in their mind and wonder why he did not tell us his side of it." Id., 289 S.C. at 434, 346 S.E.2d at 710. This Court held these comments by the trial judge were "erroneous, improper and contrary to South Carolina law," and reversed and remanded for a new trial. Id.

In its opinion on the problems created by the trial court's role in pushing the codefendant to waive her privilege against self-incrimination against the advice of her attorney and testify on behalf of the State, the Court of Appeals emphasized the lower court had a legitimate role to play in verifying the codefendant understood her rights and that the actions took place outside the presence of the jury resulting in no prejudice.

However, this holding ignores the lower court's overzealous actions which far exceeded the general colloquy required of a witness whose 5th Amendment right against self-incrimination is impacted. Petitioner does not assert the trial court had no role to play during the State's effort to call the codefendant to the stand during trial. It is improper for either party to call a "witness solely for the sake of invoking his or her Fifth Amendment privilege." State v. Hughes, 328 S.C. 146, 154–55, 493 S.E.2d 821, 825 (1997). "Moreover, a trial court is limited to compel a person's testimony if it is 'perfectly clear' the testimony will not result in criminal liability and the

testimony 'cannot possibly have [a] tendency to incriminate.'" State v. Lawrence, 439 S.C. 611, 618, 889 S.E.2d 557, 561 (2023) (*citing* Hoffman v. United States, 341 U.S. 479 (1951)). As such, the trial court has a legitimate role but that was limited to ascertaining the "application of the privilege" and that the "guiding principle in a self-incrimination inquiry is the objective reasonableness of a witness's claimed fear of future prosecution." Grosshuesch v. Cramer, 377 S.C. 12, 26, 659 S.E.2d 112, 119 (2008). Certainly, under Lawrence and Grosshuesch, the trial court was required to inquire into whether the codefendant faced legal jeopardy and could properly assert her Fifth Amendment privilege. As that jeopardy was admitted by the State,[5] the proper inquiry by the trial court was limited to verifying the codefendant understood that jeopardy and desired to invoke the privilege. Rather than conform to this limited scope of inquiry, the trial court became an advocate for the codefendant to ignore the advice of her counsel and waive her rights.

Petitioner has found no appellate court that has approved a trial court serving as an advisor to a witness, against the witness' own legal counsel, to actively waive their privilege against incrimination and testify in favor of the State while actively facing criminal prosecution over the same acts and events as a codefendant. To the contrary, our Courts have expressly rejected a trial court stepping outside the role of neutral and expressing their personal views on the wisdom of decisions like invoking the 5th Amendment. *See* State v. Crisp, 362 S.C. 412, 417, 608 S.E.2d 429, 432 (2005) ("[W]e adhere to our precedent and conclude such comments [conjecture that a juror may lie to get on a jury] by a trial judge during a guilty plea proceeding are fundamentally erroneous and constitute prejudicial error."); Butler v. State, 302 S.C. 466, 467, 397 S.E.2d 87, 87 (1990) (holding a trial court's "warning that even though he would charge

[5] The State requested the trial court to "have the codefendant just to have her invoke her Fifth, if she intends to do that. It's obviously her personal right to do." R. 231, ll. 7 – 11.

the jury they could not consider the defendant's failure to testify, the jury would most likely ignore this instruction" in discussing the defendant's right to testify was never harmless).

The trial court here actively went far outside the permitted bounds outlined in Lawrence and Grosshuesch and strayed into the improper conduct condemned in Crisp and Butler. The Court of Appeals found no "prejudicial impact" from these actions because they took place outside the presence of the jury and the codefendant testified in line with her police interview. State v. Dixon, Unpublished Opinion No. 2026-UP-395 (filed August 5, 2026).

However, the actions of the trial court here created a structural error depriving Petitioner of his right to a fair and impartial judge. *See* State v. Campbell, 297 S.C. 24, 26, 374 S.E.2d 668, 668–69 (1988) (holding the basis for judges not commenting on the facts is "founded upon the concept of our system of justice that every person charged with a crime has the right to a fair and impartial trial and that such a trial may only be achieved with the neutrality of the trial judge."). Petitioner was prejudiced by the actions of the trial judge stepping outside his role as neutral in the same manner as the accused in Crisp and Butler. The fact that the jury was not present is simply irrelevant to the issue presented here. The jury was likewise not present for the improper actions outlined in Crisp and Butler. The trial court's abandonment of its role as neutral in driving the codefendant to waive her privilege against self-incrimination and testify was improper and the trial court erred in failing to grant a mistrial as requested resulting in a structural error as found in Crisp and Butler. *By its very nature*, being tried by a judge that abandons their role as neutral *is prejudicial* and requires redress by this Court.

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined

> with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.'

In re Murchison, 349 U.S. 133, 136 (1955).

The Court of Appeals erred in finding no abuse by the trial court in the actions taken to advocate for codefendant Jones to waive her Fifth Amendment rights and take the stand against the advice of her own counsel. This Court should grant review and reverse, emphasizing the limited and proper role of the trial court in such settings and caution the bench from vacating the role of neutral and becoming both a legal advisor to a witness and an advocate to throw themselves on the mercy of the prosecution in exchange for testifying.

II. The Court of Appeals erred in holding a criminal defendant must identify a specific adverse ruling or sentencing decision to establish constitutionally disqualifying judicial bias when the presiding judge expressly states that he is more willing to imprison men than women.

In addition, this Court should grant review of the Court of Appeals' opinion that the trial court's statements about its treatment and sentencing male defendants versus female defendants (themselves a portion of the improper comments impacting the trial court's role of neutral argued above), were not "evidence" of bias or prejudice on the part of the trial court. In expressing concern over this portion of the trial court's actions, the Court of Appeals excused them since, again, they were uttered outside the presence of the jury.

> Although we are concerned by the court's comment that it would "put a guy in prison a lot faster than [it would] put a woman in prison," Dixon did not identify any ruling or sentence affected by bias. Thus, considering the colloquy as a whole, we hold that Dixon has not demonstrated that the trial court abused its discretion in denying his motion for recusal.

State v. Dixon, Unpublished Opinion No. 2026-UP-395 (filed August 5, 2026).

Respectfully, whether the jury was present for this portion of the trial court's comments is irrelevant. The context of the remarks came as the trial court emphasized its opinion, despite the contrary testimony of the victim earlier in trial, that it was hard for the trial court to believe that the codefendant Jones "would've beaten the man in the head and forced him in the trunk and all that stuff. Sounds like she was just the third wheel here." R. 245, ll. 8 – 11. As the trial court continued to push the codefendant to testify, he advised her: "I'll put a guy in prison a lot faster than I'll put a woman in prison, especially a woman that has three children." R. 246, ll. 3 - 5. A trial court judge that explicitly tells an accused he is going to be treated differently than his codefendant based solely upon gender has admitted bias and violated Petitioner's due process right to a fair and impartial trial.

The Court of Appeals noted that the "fair meaning of any remark must be interpreted in the light of the context in which it is uttered in determining whether the remarks show personal bias or prejudice on the part of the judge sufficient to require that he be disqualified." Shaw v. State, 276 S.C. 190, 192–93, 277 S.E.2d 140, 141 (1981). In claiming "no evidence" was presented regarding the bias of the trial court, the Court of Appeals relied upon the lack of any ruling or sentence issue indicating bias. On the contrary, the trial court's active role of pushing the codefendant to the stand and excusing her culpability in the underlying crime despite the testimony of the victim was active evidence of bias. The comments were not made in jest and excusable as light-hearted as was the case in Shaw. Guidance here can be found from the treatment of comments made by trial courts regarding the wisdom of taking the stand or a jury's inherent prejudices. *See* Crisp, 362 S.C. at 417, 608 S.E.2d at 432 (condemning conjecture that a

juror may lie to get on a jury) and Butler, 302 S.C. at 467, 397 S.E.2d at 87 (1990) (reversing based upon a trial court's statements that a jury would ignore his instructions).

Crisp and Butler, along with the present case, can be contrasted with State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) which found no evidence of bias in the way trial judges were selected in South Carolina simply because the judge ruled in favor of the State. Here, as opposed to Langford, this Court has the benefit of the trial court's own admission of his bias and his improper actions dealing with the codefendant's assertion of her 5th Amendment right as evidence of improper bias requiring reversal. The fact that the improper statements of bias occurred outside the presence of the jury does not resolve the impact they had on Petitioner's right to a "fair and impartial trial and that such a trial may only be achieved with the neutrality of the trial judge." State v. Campbell, 297 S.C. at 26, 374 S.E.2d at 668–69. "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases." In re Murchison, 349 U.S. 133, 136 (1955). Herer, the trial court's admitted gender bias created a structural error requiring reversal.

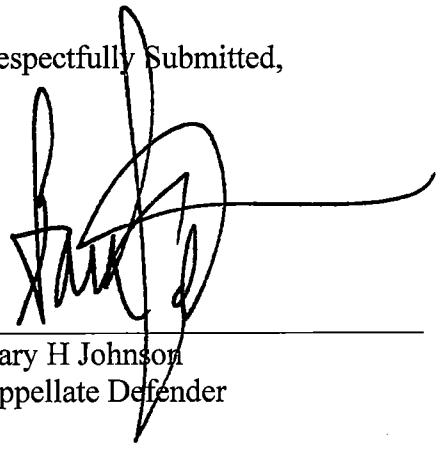
> The Court has little trouble concluding that a due process violation arising from the participation of an interested judge is a defect "not amenable" to harmless-error review, regardless of whether the judge's vote was dispositive.

Williams v. Pennsylvania, 579 U.S. 1, 14 (2016). The Court of Appeals improperly relied upon the absence of the jury as a determining factor. Under Williams, being tried by a judge with an admitted gender bias violates due process and creates a structural error.

CONCLUSION

Based upon the impact on Petitioner's fundamental right to a fair trial before a neutral judge, the Court of Appeals erred in failing to address and correct the conduct of the trial court which created a structural error in Petitioner's trial. This petition permits this Court to confirm the permissible limits of judicial involvement when an indicted codefendant invokes the Fifth Amendment and address the constitutional consequences of a trial judge expressing an explicit gender preference during trial. This Court should grant review and reverse Petitioner's conviction and order a new trial.

Respectfully Submitted,



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This 12th day of November, 2026.