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Aug 19 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARTIN DIXON,

APPELLANT

APPELLATE CASE NO. 2023-000597

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

Opinion No. 2026-UP-395

PETITION FOR REHEARING

On August 5, 2026, this Court issued an unpublished opinion denying the trial court erred in refusing to grant a mistrial based upon a departure from the role as neutral and actively encouraging the co-defendant to testify on behalf of the State and stating the trial court would never sentence a woman the same as a man. *See* State v. Dixon, No. 2026-UP-395 (S.C. Ct. App. Aug. 5, 2026). Pursuant to Rule 221(a), SCACR, Martin Dixon requests that this Court grant rehearing and reverse.

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

Respectfully, these findings ignore the Record of 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. 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's legitimate role 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 co-defendant faced legal jeopardy and could properly assert her 5th Amendment privilege.

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 co-defendant. 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 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, as outlined in Petitioner's Final Brief to this Court, actively went far outside the permitted bounds outlined in Lawrence and Grosshuesch and strayed into the improper conduct condemned in Crisp and Butler. This Court's opinion finds no "prejudicial impact" from these actions because they took place outside the presence of the jury and the co-defendant testified in line with her police interview.

> Additionally, the challenged colloquy occurred outside the jury's presence, and the record does not show the court ordered the co-conspirator to testify or that it directed the substance of her testimony. Further, the co-conspirator's testimony implicating Dixon was consistent with the video-recorded statement she gave to law enforcement after her arrest, which was admitted and provided to the jury during deliberations.

State v. Dixon, Op. No. 2026-UP-395 (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.");

Final Brief of Appellant, p. 10. 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. This Court should reconsider its position that the actions taken by the trial court were excused by the mere fact that the jury was not present to witness the events. The trial court's abandonment of its role as neutral in driving the co-defendant 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 and the authorities cited in Appellant's Final Brief to this Court. *By its very nature*, being tried by a judge that abandons their role as neutral *is prejudicial* and requires redress by this Court.

In addition, this Court should reconsider its 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 improper actions, this Court 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, Op. No. 2026-UP-395 (2026).

Respectfully, whether the jury was present for this portion of the trial court's comments is also 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 court to believe that the codefendant "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 co-defendant 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 face a longer sentence based solely upon his gender has admitted bias and violated Petitioner's due process right to a fair and impartial trial and sentence.

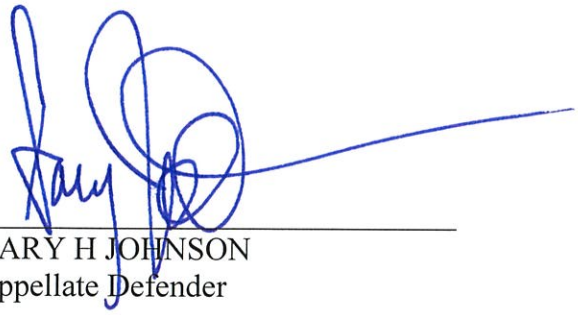
This Court notes that the "fair meaning of any remark must be interpreted in the light of the context in which it is uttered in determining whether the remarks show personal bias or prejudice on the part of the judge sufficient to require that he be disqualified." Shaw v. State, 276 S.C. 190, 192–93, 277 S.E.2d 140, 141 (1981). In claiming "no evidence" was presented regarding the bias of the trial court, this Court's opinion relies upon the lack of any ruling or sentence issue indicating bias. On the contrary, the trial court's active role of pushing the co-defendant 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 gleamed 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 co-defendant'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.

Petitioner respectfully requests that this Court review its determination that the trial court's conduct regarding the co-defendant's testimony and his statements of bias do not warrant reversible error as undermining Petitioner's right to a fair trial by a neutral judge.

Respectfully Submitted,



GARY H JOHNSON
Appellate Defender

This 19th day of August, 2026.

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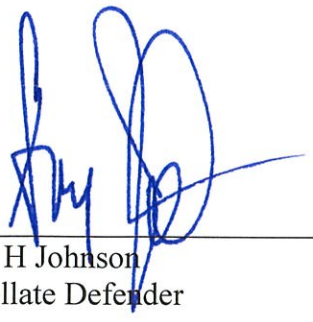
MARTIN DIXON,

APPELLANT

APPELLATE CASE NO. 2023-000597

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Martin Dixon, #280504, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of August, 2026.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Wednesday, August 19, 2026 11:57 AM
To: Mark Farthing
Cc: Grace Sommer; Johnson, Gary
Subject: 2023-000597 - State v. Martin Dixon - Petition for Rehearing
Attachments: 2023-000597 - State v. Martin Dixon - Petition for Rehearing.pdf

Dear Mr. Farthing,

Attached please find a copy of the Petition for Rehearing in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Gary Johnson
Appellate Defense

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