STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-00607

THE STATE,

Respondent,

v.

DANIEL MAURICE FRASIER,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
S.C. Bar No. 100108

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
OT Wallace Building
Charleston, South Carolina 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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Appellant's appellate challenge to the State's closing argument referencing the legislative intent of the sex offender registry and characterizing Appellant as a high risk offender is not preserved for appellate review because the trial court sustained defense counsel's initial objection, defense counsel never objected to the remainder of the State's closing argument, and defense counsel never moved for a mistrial or any alternative relief. However, notwithstanding any issue preservation concerns, the State's remarks during its closing argument were not improper and did not render Appellant's trial fundamentally unfair when considered in context of the record as a whole, and any prejudice that could have resulted from those remarks was eliminated through the issuance of a curative instruction to the jury. Furthermore, any purported error is harmless and had no impact on the outcome of Appellant's trial.

STATEMENT OF THE CASE

Appellant Daniel Maurice Frasier, a convicted sex offender, was required to register as a sex offender four times a year pursuant to S.C Code Ann. § 23-3-430. In April of 2015, Appellant failed to register as a sex offender as required by law. On May 18, 2015, law enforcement officers in Charleston County obtained an arrest warrant for Appellant for failure to register as a sex offender; Appellant was subsequently arrested in July of 2015. The Charleston County Grand Jury indicted Appellant for failure to register as a sex offender during its October 2015 term. On March 17, 2016, Appellant proceeded to a jury trial in the Charleston County Court of General Session with the Honorable William P. Keesley, circuit court judge, presiding. The jury convicted Appellant as indicted. The trial court sentenced Appellant to a term of imprisonment of 366 days. Thereafter, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On October 17, 1985, Appellant was convicted and sentenced for committing two counts of lewd act on a child under fourteen years old. (Tr. 39, 86, 89-90). As a result of these convictions, Appellant was classified as a tier III offender and was required to register as a sex offender four times a year pursuant to S.C Code Ann. § 23-3-430. (Tr. 39, 92). Appellant's mandate to register first arose in 1994 and he registered for the first time with the Charleston County Sheriff's Office on July 28, 1995. (Tr. 59, 93). Pursuant to statutory registration requirements, Appellant was required to register in his home county of Charleston every January, April, July, and October. (Tr. 58, 70-72).

On January 7, 2015, Appellant properly registered with Holly Bozard, a civilian investigator with the Charleston County Sheriff's Office assigned to the sex offender registry division. (Tr. 68). When Appellant registered in January, Investigator Bozard verbally reminded Appellant of his duty to register in April. (Tr. 68). Additionally, Appellant signed his registration paperwork that included a written reminder of his duty to register in April. (Tr. 68-69). In March of 2015, the sex offender registry division mailed Appellant a reminder postcard advising him of his duty to register during April. (Tr. 63-65).

Appellant failed to register in April as statutorily mandated during April. (Tr. 76). Deputy Robert Colson, who was assigned to the sex offender registry division, noticed towards the end of April that Appellant had not yet registered. (Tr. 75-76). Deputy Colson began attempting to contact Appellant and his associates using the current phone numbers and addresses Appellant provided at his last registration in January. (Tr. 75-76, 83). Additionally, Deputy Colson checked with local detention centers and hospitals in an attempt to locate Appellant. (Tr. 76). Deputy Colson continued attempting to locate Appellant until mid-May without any success. (Tr. 76-78).

On May 18, 2015, Deputy Colson swore an arrest warrant for Appellant for failure to register as a sex offender. (Tr. 77, 79). Appellant was subsequently arrested in July of 2015. (Tr. 82-83).

Appellant proceeded to a jury trial on March 17, 2016. During its case, the State presented testimony all three employees of the sex offender registry division of the Charleston County Sheriff's Office. (Tr. 53-84). The State also called the General Sessions case management supervisor at the Charleston County Clerk's office and introduced a certified copy of one of Appellant's prior convictions for lewd act on a child under fourteen years old. (Tr. 84-90). Appellant did not call any witnesses or present any testimony.

During the State's closing argument, the prosecuting assistant solicitor made the following remarks:

> Good afternoon, ladies and gentlemen. Thank you for bearing with us. Today I know, for some of you, it's been a longer week than for others, and believe me, I appreciate it, Ms. Frierson [sic] appreciates it and your community appreciates it. It's—I understand—I echo the Court's understanding, like he mentioned at the beginning, it's not the easiest thing to do out of your lives, come in here and do this, but we sincerely appreciate it.
>
> And it's interesting, we talk about community because that's exactly what the sex offender registry is designed for. The Legislature did that for the protection of the community. It's not to punish Mr. Frasier for his past conviction. It's designed to ensure that we're keeping tabs on a subsection of people who have been shown and deemed by the Legislature to be a high risk degree offender.

(Tr. 109-10). Defense counsel objected, citing "facts not in evidence." (Tr. 110). The trial court sustained his objection and instructed the jury to "[d]isregard the last statement[.]" (Tr. 110). Thereafter, the assistant solicitor resumed his argument, stating:

> And do, as I was saying, the registry acts as a protection for our community. And in creating the act, they put certain duties and responsibility on those who it covers, in this case, Mr. Daniel Frasier.

(Tr. 110-11). Defense counsel did not object and the assistant solicitor continued with his argument without any objections from defense counsel. (Tr. 111-15). The trial court then charged the jury, and within its charge, again instructed the jury not to consider any testimony or evidence that it had previously instructed the jury to disregard. (Tr. 120). Following a short deliberation, the jury convicted Appellant as indicted. (Tr. 131-32).

ARGUMENT

Appellant's appellate challenge to the State's closing argument referencing the legislative intent of the sex offender registry and characterizing Appellant as a high risk offender is not preserved for appellate review because the trial court sustained defense counsel's initial objection, defense counsel never objected to the remainder of the State's closing argument, and defense counsel never moved for a mistrial or any alternative relief. However, notwithstanding any issue preservation concerns, the State's remarks during its closing argument were not improper and did not render Appellant's trial fundamentally unfair when considered in context of the record as a whole, and any prejudice that could have resulted from those remarks was eliminated through the issuance of a curative instruction to the jury. Furthermore, any purported error is harmless and had no impact on the outcome of Appellant's trial.

Appellant contends the trial court erred in failing to properly rule on Appellant's objection to the assistant solicitor's remarks regarding "conscious of the community" and the "mischaracterization" of Appellant as a high risk offender. Appellant asserts these comments about the legislative intent to protect the community convey to the jury that the sex offender registry is a legislatively sanctioned community protection vehicle amounting to a clear plea to the jury to similarly align with our legislature to protect the community and convict Appellant regardless of evidence presented. Appellant also maintains the characterization of him as a high risk offender is factually incorrect and not based on any evidence in the record. Appellant argues these remarks are so improper as to render his trial fundamentally unfair and warrant a new trial. Initially, Appellant's appellate challenge to the assistant solicitor's remarks are wholly unpreserved for appellate review because defense counsel's sole trial objection are the beginning of the State's closing argument was sustained by the trial court, and defense counsel sought no further relief from the trial court after his objection were sustained. However, regardless of any issue preservation concerns, the State's remarks during its closing argument were not improper and did not render Appellant's trial fundamentally unfair. Furthermore, any purported error is

harmless and had no impact on the outcome of Appellant's trial. Appellant's convictions should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). Imposing issue preservation requirements on a party "is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

However, even if a party properly objects to an issue that arises during trial, no issue is preserved for appellate review if the trial court sustains the party's objection and the party does subsequently move to strike the allegedly objectionable matter or request some curative measure from the trial judge. State v. Wingo, 304 S.C. 173, 177-178, 403 S.E.2d 322, 325 (Ct. App. 1991); see State v. Saltz, 346 S.C. 114, 129, 551 S.E.2d 240, 248 (2001) ("The requirement that a party move to strike objectionable testimony applies when an objection has been *sustained*."). Critically, if party fails to request additional relief after an objection is sustained, that party has obtained the only relief sought while preserving no issue for appellate review. See State v. Thompson, 304 S.C. 85, 87, 403 S.E.2d 139, 140 (Ct. App. 1991) ("[T]he trial judge sustained

defense counsel's objections to the testimony of which [Thompson] complains. No motion to strike, no request for instruction that the jury disregard the testimony, nor a motion for a new trial based on the admission of the testimony was made at trial. Appellant has failed to preserve this issue. He obtained the only relief he sought and this court, therefore, has no issue to decide.").

Significantly, a party can waive an objection to an issue by indicating to the trial court the party no longer has an objection to an issue the party previously objected to or by eliciting similar testimony to testimony to which the party previously raised an objection without reserving that earlier objection. See State v. McKinney, 258 S.C. 570, 571, 190 S.E.2d 30, 30 (1972) ("During the course of the trial certain testimony was admitted over the objection of [McKinney's] counsel. Thereafter, counsel for [McKinney] cross-examined the witness thereabout without reserving the objection previously made. The objection was thereby lost and if any error had been committed in the admission of the testimony it was cured."); State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) ("An objection to the admission of evidence is waived where the same or similar evidence has been elicited by the objector.").

In the case at bar, the trial court sustained defense counsel's only objection to the assistant solicitor's remarks at the beginning of the State's closing argument. The trial court instructed the jury to disregard the comments, and the assistant solicitor continued with his closing argument. Following the trial court's rulings sustaining defense counsel's objection, defense counsel did **not** object to any portion of the State's closing argument, did **not** seek any further relief from the trial court, and did **not** ask the trial court to employ any curative measures. Therefore, Appellant's complaints on appeal about the remarks made by the assistant solicitor are not preserved for appellate review because defense counsel's objection was **sustained** during

trial and no further relief was sought in regard to those questions. See Thompson, 304 S.C. at 87, 403 S.E.2d at 140 (holding Thompson failed to preserve any issue in regard to an objection that was sustained because he failed to make a motion to strike, request a curative strike, or move for a new trial after the objection was sustained); see also State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) ("Inasmuch as the appellant obtained the only relief he sought, this court has no issue to decide.").

Likewise, defense counsel's objection was arguably only referencing the assistant solicitor's comment that the sex offender registry was designed only to track those deemed to be "high risk degree offenders." (Tr. 110). This is particularly true in light of Appellant's appellate argument that this mischaracterized him based on facts not in evidence, as this is the argument defense counsel set forth when objecting during trial. Therefore, Appellant's appellate argument regarding the legislative intent behind the sex offender registry and the conscious of the community are not preserved for preserved for appellate review. Because defense counsel failed to make any objection or argument as to the State's description of legislative intent, or as to the State's use of the term or application of "community," Appellant's arguments raised for the first time on appeal are not preserved for appellate review. State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991) ("Where an objection and the ground therefor is not stated in the record, there is no basis for appellate review."), see also State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."). As defense counsel did not raise the issue Appellant is now raising on appeal to the trial court, the Appellant's appellate claim cannot properly be considered or addressed for the first time on appeal. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited

to the grounds raised at trial."); see also State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). As a result, Appellant's claims that the State influenced the jury by referring to them that as members of the community and talking about how the sex offender registry protects the community were not properly preserved for appellate review and should be rejected by this Court on issue preservation grounds. See State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) ("The rule is well established that if asserted errors are not presented to the lower court, the question cannot be raised for the first time on appeal.").

Accordingly, Appellant failed to preserve any issue for appellate review in regard to the assistant solicitor's closing argument. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"). Appellant's convictions should be affirmed.

B. Propriety of the State's Closing Argument

Closing arguments are a basic element of the adversarial fact-finding process in a criminal trial. Herring v. New York, 422 U.S. 853, 858 (1975). Such arguments serve "to sharpen and clarify the issues for resolution by the trier of fact in a criminal case" and provide both the prosecution and the defense with an opportunity to advocate for their respective positions, to argue for certain inferences to be drawn from the evidence and testimony presented, and to identify the weaknesses in their opponents' positions. Id. at 862. As a result, closing arguments are crucial towards achieving the ultimate objective of the adversarial system of justice in the United States, which is for the correct verdict to be reached in each case. Id.; see

also Gardner v. Florida, 403 U.S. 349, 360 (1977) ("[T]he debate between adversaries is often essential to the truth-seeking function of trials[.]").

In presenting a closing argument to the jury, a solicitor—and any other party—must confine the argument to the evidence in the record and the inferences to be drawn from that evidence. State v. Tubbs, 333 S.C. 316, 321, 509 S.E.2d 815, 818 (1999). However, the solicitor is unquestionably permitted in a closing argument to state and discuss the State's version of the testimony, to comment on the weight to given to such testimony, and to point out the matters that the jury should and should not consider in arriving at a verdict. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); see State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) (" '[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.' " (citations omitted)).

Additionally, the statements of a solicitor at trial "must be carefully tailored so as not to appeal to the personal biases of the jury." Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (citing Von Dohlen v. State, 360 S.C. 598, 609 S.E.2d 738, 744 (2004)). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. A prosecutor may not urge jurors to convict a defendant in order to protect community values, preserve order, or deter future law breaking. State v. Liberte, 336 S.C. 648, 654, 521 S.E.2d 744, 747 (Ct. App. 1999) (internal citations omitted).

In considering the propriety of a closing argument, "[i]t is sometimes difficult to draw the line between proper and improper argument, but counsel's remarks must be confined within the record." State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961). "However, some

latitude must necessarily be allowed and it must, to a large extent, be left to the wide discretion of the Circuit Judge." Id. As a result, trial courts have broad discretion in regard to both the range and scope of closing arguments. State v. Raffaldt, 318 S.C. 110, 114-115, 456 S.E.2d 390, 393 (1995); see State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) ("The trial court has broad discretion when dealing with the propriety of the solicitor's argument.").

When a challenge is raised to the propriety of a closing argument, the burden rests upon the party raising the challenge to establish that the allegedly improper argument rendered the trial fundamentally unfair. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). On appeal, appellate courts will review the alleged impropriety in the context of the entire record and must determine whether the comments so infected the trial with unfairness as to make the resulting conviction a denial of the defendant's due process rights. State v. Rudd, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003); see Patterson, 324 S.C. at 17, 482 S.E.2d at 766 ("The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process."). In making that determination, " 'it is not enough that the [challenged] remarks were undesirable or even universally condemned.' " Darden v. Wainwright, 477 U.S. 168, 181 (1999) (citation omitted). Critically, absent a clear abuse of discretion, appellate courts will ordinarily not disturb the trial court's ruling in regard to a closing argument. Rudd, 355 S.C. at 548, 586 S.E.2d at 156; see State v. Sweet, 342 S.C. 342, 347, 536 S.E.2d 91, 93 (Ct. App. 2000) ("Ordinarily, a trial court's rulings on closing arguments will not be disturbed.").

In the present case, the assistant solicitor made the following remarks at the outset of his closing argument:

> Good afternoon, ladies and gentlemen. Thank you for bearing with us. Today I know, for some of you, it's been a longer week than

> for others, and believe me, I appreciate it, Ms. Frierson appreciates it and your community appreciates it. It's—I understand—I echo the Court's understanding, like he mentioned at the beginning, it's not the easiest thing to do out of your lives, come in here and do this, but we sincerely appreciate it.
>
> And it's interesting, we talk about community because that's exactly what the sex offender registry is designed for. The Legislature did that for the protection of the community. It's not to punish Mr. Frasier for his past conviction. It's designed to ensure that we're keeping tabs on a subsection of people who have been shown and deemed by the Legislature to be a high risk degree offender.

(Tr. 109-10). Defense counsel objected, citing "facts not in evidence." (Tr. 110). The trial court sustained his objection and instructed the jury to "[d]isregard the last statement[.]" (Tr. 110). Thereafter, the assistant solicitor resumed his argument, stating:

> And do, as I was saying, the registry acts as a protection for our community. And in creating the act, they put certain duties and responsibility on those who it covers, in this case, Mr. Daniel Frasier.

(Tr. 110-11). Defense counsel did not object and the assistant solicitor continued with his argument without any objections from defense counsel. (Tr. 111-15). The trial court then charged the jury, and within its charge, again instructed the jury not to consider any testimony or evidence that it had previously instructed the jury to disregard. (Tr. 120). The trial court properly responded to Appellant's objection and committed no error because the State's closing argument remarks did not render Appellant's trial fundamentally unfair. See Darden, 477 U.S. at 181 ("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." (internal citations omitted)).

The challenged portion of the assistant solicitor's remarks only consisted of a small portion of a closing argument that was otherwise properly focused on the testimony and evidence establishing Appellant's guilt, was quickly interrupted by a sustained objection, was never

repeated or referenced again during trial, and was rapidly followed by a pointed curative instruction from the trial court. See State v. Brown, 389 S.C. 84, 95, 697 S.E.2d 622, 628 (Ct. App. 2010) ("A curative instruction is usually deemed to cure an alleged error."); see also State v. Plath, 281 S.C. 1, 17, 313 S.E.2d 619, 628 (1984) ("[A]ppellants complain of rhetorical flourishes engaged in by the Solicitor in his summation . . . . An inelegant turn of phrase or momentary lapse of good taste will rarely constitute prejudicial error, nor does robust language necessarily inject an arbitrary factor into a trial such as this one."); cf. Donnelly v. DeChristoforo, 416 U.S. 637, 645 (1974) ("[T]he prosecutor's remark here, admittedly an ambiguous one, was but one moment in an extended trial and was followed by specific disapproving instructions. Although the process of constitutional line drawing in this regard is necessarily imprecise, we simply do not believe that this incident made respondent's trial so fundamentally unfair as to deny him due process."). Under those circumstances, the potential prejudice that could have resulted from the remarks was not sufficient to render Appellant's trial fundamentally unfair and was promptly eliminated through the trial court's curative instruction, which instructed the jurors to disregard the remark. See Brown, 389 S.C. at 95, 697 S.E.2d at 628 ("[W]e believe the trial court's instruction to the jury cured any error."); see also State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) ("[J]urors are presumed to follow the law as instructed to them."); State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975) ("It is the duty of jurors to take the law from the court in the particular case on trial. It must be presumed that they do so."). Accordingly, the State's closing argument was not fundamentally unfair and did not deprive Appellant of his right to a fair trial. See State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one.").

Despite to readily apparent propriety of the State's closing argument, particularly when reviewed in the context of the entire record as required, Appellant argues the assistant solicitor's comments thanking the jury for their service on behalf of the community and describing the sex offender registry as an enactment designed to make communities safer constituted a clear "plea for the jury to enlist themselves along with the legislators as community protectors who must as jurors assist in safeguarding the community by convicting appellant of failing to register as a sex offender." In support of this argument, Appellant cites to Liberte.[1] In Liberte the solicitor made the following remarking during his closing argument:

> Ladies and gentlemen, I want to ask you right now to listen to the judge's instructions about reasonable doubt, and ask yourselves is it being used as a sword to attack law and order, to attack law enforcement, to attack people who are trying to keep drugs off our streets?

Liberte, 336 S.C. at 652, 521 S.E.2d at 746. In Liberte, the solicitor urged the jury to ignore the trial court's instructions and the burden of proof carried by the State in favor of a conviction for the betterment of the community.

There simply is no comparison between the solicitor's remarks in Liberte and the comments of the solicitor in the instant case. Here, the context behind the assistant solicitor's use of "community" is clear and unequivocal—thanking the jury for its service and the legislature intended for the sex offender registry to protect the community. By describing the registry in such a fashion and speaking "of community," the solicitor uses the term community as vignette to move into a discussion of reporting requirements and the failure of the Appellant to register.

[1] Despite citing to Liberte to support his position, Appellant seemingly acknowledges the vast differences between his case and Liberte, stating "[A]lthough the argument in appellant's case was not calculated to appeal to the jury's passions and prejudices regarding dugs as in Liberte . . . ."

There is no offensive language or intent behind the solicitor's statements, but rather, the record shows the careful methodology of the State in reinforcing the trial court's charge. In Liberte, the solicitor calls upon the jury to ignore any reasonable doubt they may hold, thereby shifting the burden of proof from the State to the defendant. In contrast, the assistant solicitor's argument in this case conscientiously draws attention to the burden of proof, delineating the State must prove that Appellant was on the sex offender registry, that he was required to register, and that he failed to do so. (Tr. 111). The solicitor in Liberte invites the jury to disregard the charge given by the trial court; here, the solicitor instructs the jury that they may only decide the case based upon the law and the trial court's instructions. (Tr. 111-12). Appellant's case in not analogous to Liberte.

Similarly, Appellant's assertions that he is entitled to a new trial because the State's remarks "mischaracterized" him as a high risk degree offender are also without merit. Appellant attempts to argue the language used by the assistant solicitor was improper and warrants a new trial, but readily acknowledges the language of the provision articulating the purpose behind the sex offender registry used the term "high risk." See S.C. Code Ann. § 23-3-400 ("Statistics show that sex offenders often pose a high risk of re-offending."). Furthermore, the assistant solicitor's remarks do not specifically identify Appellant as a high risk sex offender, but rather, describe to the jury that the sex offender registry was created to monitor sex offenders—a group deemed to have a high risk of recidivism. These comments are not improper and correctly describe the legislative intent to the sex offender registry. Id.

In sum, none of the remarks made during the State's closing argument were fundamentally unfair and certainly did not deprive Appellant his right to a fair trial. Appellant's convictions should be affirmed.

C. Harmlessness of Any Purported Error in the State's Closing Argument

However, even if the State's closing argument was improper, any error is subject to a harmless error analysis and only warrants reversal if it results in actual prejudice. See Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998) ("On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt."). "Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." State v. Byers, 392 S.C. 438, 447–48, 710 S.E.2d 55, 60 (2011) (citing State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006)). Where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached," an insubstantial error that does not affect the result of the trial is considered harmless. Id. "A harmless error analysis is contextual and specific to the circumstances of the case: 'No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.'" Byers, 392 S.C. at 448, 710 S.E.2d at 60 (citing State v. Reeves, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990)). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

On appeal, courts must examine the closing arguments in conjunction with the entire record, including any curative instructions given by the trial court, and whether there is overwhelming evidence of guilt against the appellant such that any improper closing argument cannot be reasonably construed as having denied the Appellant due process of law. Brown, 383

S.C. at 516, 680 S.E.2d at 914-915 (2009). The relevant question before the court is "whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. . . . Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Brown, 383 S.C. at 516, 680 S.E.2d at 915 (2009).

In State v. Webb, this Court held prejudicial remarks to a jury by a solicitor do not deprive a defendant of a fair trial so long as there is strong evidence of a defendant's guilt and any prejudicial statements are limited in its duration. 389 S.C. 174, 697 S.E.2d 662 (Ct. App. 2010). In Webb, during the State's opening statement, the solicitor referred to the defendant and the case as being like "a hyena, a dog-like creature, wild, feral, a scavenger, a predator. Not terribly bright, not king of the jungle but its vicious, malevolent, and it hops on weak, easy prey, a mean little thing. And I asked you that question because that's what this case reminds me of." Id., at 179, 697 S.E.2d at 665. During the State's closing argument, the solicitor again referred to the case and the defendant with the hyena analogy, and implored the jury to ". . . do your job and you cage this wild animal. Put him away for what he did." Id., at 180, 697 S.E.2d at 665. Defense counsel objected and the trial court overruled his objection. Id. On appeal, this court held that the solicitor's statements did not deny the appellant his due process rights. The Webb court held that prejudicial statements are limited in effect when the record reflects strong evidence of the defendant's guilt and such statements are limited in their use.

In the present case, the State presented overwhelming evidence of Appellant's guilt of the charged offense—failing to register as a sex offender. The record demonstrates overwhelming evidence of Appellant's guilt and the facts of the case are not in dispute. Three witnesses from

the Charleston County Sheriff's Office sex offender registry division testified Appellant was required to register as a sex offender, Appellant understood he needed to register in April as he had done previously for over two decades, and Appellant was reminded of this duty verbally and in writing when he registered in January, Appellant was mailed a reminder postcard in March 2015, and Appellant wholly failed to register in April 2015. Appellant concedes he is a sex offender and that he is required to register every three months. Given that such overwhelming evidence is unrefuted by Appellant, any brief and fleeting description by the assistant solicitor to Appellant being a "high risk degree offender" or the use of the term "community" cannot be reasonably construed as having so infected the trial with unfairness as to make Appellant's conviction a denial of due process. Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, this Court should affirm the judgment and conviction of the lower court.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
S.C. Bar No. 100108

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
OT Wallace Building
Charleston, South Carolina 29401
(843) 958-1900

BY: Megan Harrigan Jameson
Megan Harrigan Jameson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Oct. 28, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-00607

RECEIVED
OCT 28 2016
SC Court of Appeals

THE STATE,

Respondent,

v.

DANIEL MAURICE FRASIER,

Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
S.C. Commission on Indigent Defense – Appellate Division
PO Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 28th day of Oct., 2016.

Megan Harrigan Jameson

Megan Harrigan Jameson
Assistant Attorney General
S.C. Bar No. 100108

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

October 28, 2016

Wanda H. Carter, Esquire
S.C. Commission on Indigent Defense – Appellate Division
PO Box 11589
Columbia, South Carolina 29211

RE: State v. Daniel Maurice Fraiser – Appellate Case No. 2016-000607

Dear Ms. Carter:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Megan Harrigan Jameson

Megan Harrigan Jameson
Assistant Attorney General
S.C. Bar No. 100108

MHJ/

Enclosures

cc: The Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services