

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge  
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**RECEIVED**

**May 04 2020**

S.C. SUPREME COURT

CANDICE R. BEASLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001365  
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

Sarah E. Shipe  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR court err finding trial counsel was not ineffective for failing to move for a mistrial where the trial judge made facial expressions and audible noises during defense witness' testimony signaling to the jury his negative opinion on the case?

## STATEMENT

Petitioner, lifelong friend of the minor child's mother, godmother to the child agreed to assume legal custody of him at the child's mother's request. On October 14, 2014, school officials discovered multiple marks on the body of the child. App. 111, ll. 3-22. When asked the child told school officials his godmother, petitioner, hit him with a jump rope. App. 194, ll. 8-13.

On June 1, 2015 a Lexington County grand jury indicted petitioner for unlawful conduct towards a child and infliction of great bodily injury upon a child. Petitioner's case was called to trial August 10-12, 2015, before the Honorable Doyet A. Early, III, and a jury in Lexington County. App. 1. Stephen Hudson represented petitioner and Suzanne Mayes, assistant solicitor, represented the state. App. 1.

At the end of trial, Judge Early instructed the jury as follows:

[I]f at any time during the trial of the case you've seen me smile or frown or chew on my glasses or roll my eyes or sigh or act like I'm bored or happy - - I listen to cases all week long every week. I cannot have an opinion on the facts[] the law just does not allow me to do that. So please don't infer - - if I've done anything that makes you think I have an opinion, set that aside. I can't have an opinion. So please, please, don't let anything that I've done in the case infer that I have an opinion of the facts.

App. 495, l. 15-496, l. 1. After deliberation the jury found petitioner guilty of unlawful conduct towards and child and infliction of great bodily injury upon a child. App. 511, ll. 12-20. During sentencing Judge Early remarked "I found [petitioner's] testimony, not only in the trial, but in the *Jackson v. Denno*[,] hearing, to be highly incredible, unbelievable." App. 530, ll. 8-11. Judge Early sentenced petitioner to concurrent sentences of ten years' imprisonment. App. 530, ll. 12-18.

On September 20, 2016, Lara Caudy, appellate counsel, filed a direct appeal on petitioner's behalf arguing the trial court erred in denying the motion for a directed verdict because the record

contained no evidence of great bodily harm. The South Carolina Court of Appeals affirmed petitioner's convictions and sentences in an unpublished opinion. *State v. Beasley*, No. 2018-UP-418 (S.C. Ct. App. 2018).

Thereafter, petitioner filed an application for PCR on January 29, 2019. App. 553-59. On June 25, 2019, an evidentiary hearing was held before the Honorable Brooks P. Goldsmith, IV. App. 570. Overture Walker represented petitioner and Taylor Smith, assistant attorney general, represented the state. App. 570.

At the evidentiary hearing, petitioner asserted trial counsel failed to move for a mistrial when Judge Early made "angry" "facial expressions" and "sounds" indicating to the jury that he had a negative opinion of defense witness' testimony and evidence. App. 581-82. Petitioner testified that Judge Early's reactions were brought to his attention by trial counsel, and at the end of trial Judge Early instructed the jury to disregard his reactions. App. 582. Petitioner's sister, Kimberly Beasley, stated Judge Early "gave a lot of sighs" and when the state introduced photographs in to evidence Judge Early shook his head. App. 588-89.

Trial counsel Hudson admitted he remembered Judge Early's instructions to the jury to disregard any of his reactions during trial. Hudson testified that although he did not have an "independent recollection" of petitioner bringing any specific behavior to his attention he "probably" made Judge Early aware if he noticed any reactions in the jury's presence. App. 603, l. 23-604, l. 18. Trial counsel maintained that had he seen Judge Early react in a way that "rose to the level of so damning the jury" could not reach a fair decision trial counsel would have made a motion for a mistrial. App. 607, ll. 1-4.

On August 3, 2019, Judge Goldsmith signed an order denying PCR. App. 628-44. Judge Goldsmith found petitioner's allegation that, Judge Early's facial expressions during trial may have

influenced the jury's decision, not credible in light of trial counsel's credible testimony and the absence of any reference to the actual occurrence of these alleged behaviors in the record. The PCR court found the remarks made by trial judge during jury instructions were an example of the type of behavior a jury should disregard and not an admission that the judge committed any of the behaviors described. App. 642-43.

This appeal follows.

## ARGUMENT

The PCR court erred finding trial counsel was not ineffective for failing to move for a mistrial where the trial judge made facial expressions and audible noises during defense witness' testimony signaling to the jury his negative opinion on the case.

A trial judge must refrain from any comment, which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy. *State v. Smith*, 288 S.C. 329, 342 S.E.2d 600 (1986); *State v. Kennedy*, 272 S.C. 231, 250 S.E.2d 338 (1978). “It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury.” *State v. Pruitt*, 187 S.C. 58, 61, 196 S.E. 371, 372 (1938); *see also State v. Stroman*, 281 S.C. 508, 316 S.E.2d 395 (1984); *State v. Robinson*, 274 S.C. 198, 262 S.E.2d 729 (1980).

“To prove prejudice resulting from trial counsel's failure to move for a mistrial, an applicant must demonstrate that, had counsel moved for a mistrial, the trial court's denial of the motion would have amounted to an abuse of discretion.” *Earley v. State*, 418 S.C. 255, 265–66, 792 S.E.2d 226, 232 (2016). Where there is no support for the PCR court's conclusion, reversal thereof is proper. *Id.*

In *Sosebee v. Leeke*, our Supreme Court held trial counsel was ineffective for failing to object when the trial court improperly commented on victim's credibility notwithstanding the court's curative instruction. *Sosebee v. Leeke*, 293 S.C. 531, 362 S.E.2d 22 (1987). Although Judge Early did not verbally comment on defense witness' credibility his facial expressions and sounds made clear to the jury his negative opinion regarding petitioner's defense. Petitioner and her sister both testified at the PCR hearing that Judge Early made faces and sounds during defense

witness' testimony as well as when photographic evidence of the child was shown. Trial counsel never denied Judge Early visibly reacted during the trial, rather, he claimed to have no "independent recollection" of any reactions. Trial counsel further maintained that if he had noticed anything during trial he would have said something to Judge Early. Those conversations are not on the record but arguably were held at a bench conference or in chambers. Additionally, Judge Early appeared to be aware of his reactions due to his instruction to the jury to disregard anything he may have done during trial. Judge Early's remarks at the end of trial, confirm his adverse opinion regarding petitioner's defense. Trial counsel was ineffective for failing to move for a mistrial after Judge Early had visible reactions to petitioner's defense. Judge Early's facial expressions and sounds of disapproval were sufficiently prejudicial to deprive petitioner of a fair trial. *See Sosebee v. Leeke*, 293 S.C. 531, 362 S.E.2d 22 (1987) (finding the trial court's comments unfairly prejudiced petitioner and trial counsel's failure to object was an error so serious as to deprive Petitioner of a fair trial).

**CONCLUSION**

By reason of the foregoing argument, a writ of certiorari should be granted to allow full briefing on the issue.

s/ Sarah E. Shipe

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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of May, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Candice R. Beasley 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 Brooks P. Goldsmith, which was held on June 25, 2019, 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 Candice R. Beasley.

Respectfully Submitted,

s/ Sarah E. Shipe

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Sarah E. Shipe  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 4th day of May, 2020.

**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.”

s/ Sarah E. Shipe

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