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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chesterfield County

Honorable Brooks P. Goldsmith, Circuit Court Judge

JULIUS CALVIN CURRY, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-002004

PETITION FOR WRIT OF CERTIORARI

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INDEX

QUESTION PRESENTED

Whether trial counsel's failure to object to the solicitor's improper opening statement, which told the jury that petitioner's charges for a fight with a police officer should be regarded "as a slap against all of us" and that "this is our chance to protect them and thank them for protecting us," deprived petitioner of the effective assistance of counsel guaranteed by the Sixth Amendment?

STATEMENT

A Chesterfield County grand jury indicted petitioner for criminal domestic violence of a high and aggravated nature, second-degree assault and battery, resisting arrest with a deadly weapon, and attempted murder and on March 3, 2014, petitioner was tried before the Honorable Paul M. Burch and a jury. App. 1 – 9. Kernard Redmond and Adam Foard represented the State. App. 1. Matthew Swilley represented petitioner. App. 1. The jury acquitted petitioner of CDVHAN and attempted murder. App. 264, l. 5 – 20. It convicted petitioner of the lesser-included offense of first-degree assault and battery, resisting arrest with a deadly weapon, and second-degree assault and battery. App. 264, l. 5 – 20. Judge Burch imposed consecutive sentences totaling twenty-one and one-half years. App. 274, l. 6 – 16. Petitioner's appeal was denied. App. 304-06.

On August 31, 2016, petitioner filed a PCR application. App. 307. On August 21, 2019, the Honorable Brooks P. Goldsmith held a hearing on petitioner's application. App. 320. L. Sherril Alford represented petitioner. Jacob A. Isenberg represented the State. App. 320. On October 21, 2019, Judge Goldsmith denied the application. App. 358. This petition follows.

STANDARD OF REVIEW

"Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014))." Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

ARGUMENT

Trial counsel's failure to object to the solicitor's improper opening statement, which told the jury that petitioner's charges for a fight with a police officer should be regarded "as a slap against all of us" and that "this is our chance to protect them and thank them for protecting us," deprived petitioner of the effective assistance of counsel guaranteed by the Sixth Amendment.

Factual and Procedural Background

The Trial

Despite hearing from two police officers that petitioner repeatedly threatened to kill one of them while repeatedly trying to stab him with a knife, the jury acquitted petitioner of attempted murder and convicted him of a lesser-included offense. App. 112, l. 5 – 120, l. 21. App. 264, l. 5 – 20. The officer responded to a domestic call in August 2013, that arose because petitioner Julius Curry ("Curry") and his girlfriend, Marshell Wright ("Wright"), were "doing drugs and drinking all day." App. 60, l. 22 – 61, l. 1. App. 177, l. 11 – 19. They ran out of cocaine and walked to the trailer park to get more. Tr. 177, l. 11 – 19. On their walk home, some men offered them a ride. App. 61, l. 10 – 25. Wright accepted the ride, but Curry did not. App. 61, l. 10 – 25. Wright locked the door when she got home because she knew Curry would be angry. App. 65, l. 1 – 16. Curry agreed he was "pretty upset." App. 178, l. 2 – 9.

Wright claimed that when Curry got home, he kicked in the door and slapped her "a couple of times." App. 63, l. 3 – 13. Curry testified they argued about Wright accepting the ride and admitted slapping her. App. 178, l. 14 – 19. The argument then "got a little more heated than I intended because things got more physical because her daughter got into it." App. 178, l. 14 – 19.

Wright agreed that her adult daughter, Shiquan Wright ("Shiquan"), "jumped in it." App. 63, l. 5 – 13. Curry and Shiquan fought. App. 63, l. 3 – 13. Wright ran outside to distract Curry and make him chase her, which he did. App. 63, l. 3 – 13. Curry returned to the house and his fight with Wright resumed. App. 63, l. 3 – 13. Wright jumped on Curry's back and bit him. App. 63, l. 3 – 13.

Shiquan testified that when Curry left to follow Wright, she grabbed an empty Hpnotiq liquor bottle and set out for the neighbor's house to call the police. App. 90, l. 20 – 22. Wright agreed that a Hpnotiq bottle is "a very heavy liquor bottle." App. 79, l. 2 – 9. When Shiquan walked down the road with the bottle, Curry pulled his knife. App. 91, l. 2 – 7. Shiquan admitted that Curry only pulled out a knife after she picked up the Hpnotiq bottle. App. 101, l. 1 – 4. They argued and Curry was able to get the bottle out of Shiquan's hand and throw it "across the field." App. 91, l. 15 – 23. Shiquan said that Curry never attempted to stab her with the knife. App. 105, l. 7 – 9. Curry began talking to Wright; Shiquan continued to the neighbor's and called the police. App. 91, l. 15 – 92, l. 5.

Wright began talking to Curry to calm him down. App. 67, l. 17 – 23. "So he walked back to me and me and him walked back to the house together. And we went inside." App. 67, l. 17 – 23. Curry pushed a chair against the door and was still holding the knife. App. 67, l. 24 – 25. Curry was unsure who Shiquan would bring back with her to the house because when she left, she told Curry, "I've got something for you or you're going to get yours." App. 196, l. 4 – 11. App. 179, l. 17 – 25. Curry thought Shiquan might call one of her friends. App. 179, l. 25 – 180, l. 2.

Curry and Wright went into the bedroom. App. 180, l. 1 – 8. The door was locked. App. 71, l. 2 – 6. Wright said Curry used more cocaine and drank more liquor. App. 67, l.24 – 68, l.

2. Officer Jimmy Coombs ("Coombs") arrived at the residence and Shiquan told him that Curry had a knife. App. 110, l. 3 – 111, l. 21. Wright agreed on cross-examination that once they got into the bedroom that Curry "was calming down." App. 79, l. 23 – 80, l. 15. Even though Curry was still holding the knife, he never threatened Wright with it or pointed it at her. App. 79, l. 23 – 80, l. 15.

Wright heard Coombs at the door to the bedroom telling Curry to drop the knife and come out to talk. App. 70, l. 13 – 17. All Curry heard was somebody calling his name and "didn't know who it was out there." App. 198, l. 2 – 9.

Coombs gave a literal blow-by-blow description of what happened next. App. 112, l. 5 – 120, l. 21. Coombs took out his tazer. App. 111, l. 22 – 112, l. 4. He "hammer fisted the door," yelled "Sheriff's Office," and that he was going to kick in the door. App. 112, l. 5 – 21. Coombs turned the doorknob and opened it four inches and saw Curry holding the door shut. App. 112, l. 5 – 120, l. 21. The officer "kept trying to reason with him," but Curry supposedly responded that "If you come through this door it will be the last thing you ever do." App. 112, l. 5 – 120, l. 21.

Coombs "booted the door" and when it flew open, he saw Curry seven feet away in "a fighting stance, a blade position." App. 112, l. 5 – 120, l. 21. Curry's shoulders "flinched" and Coombs fired his tazer, with the prongs attaching to Curry's throat and belly. App. 112, l. 5 – 120, l. 21. The tazer electrified Curry for "the full 5 seconds" and Curry "folded up like the mummy position and fell onto the floor." App. 112, l. 5 – 120, l. 21. Curry fell face first, off his feet. App. 134, l. 12 – 18.

Because Coombs could not see the knife and Curry did not respond to his commands to throw away the knife after being tazed for five seconds, Coombs tazed Curry two or three more

times. App. 114, l. 8 – 115, l. 3. Curry moved his hands and was still holding the knife so Coombs put his boot on Curry's wrist and reached for his handcuffs. App. 115, l. 4 – 9. Curry "all in one fluid motion" rolled, grabbed the knife and thrust it, but Coombs caught the hand holding the knife. App. 115, l. 10 – 15.

The two men fought over the knife in an "arm wrestling match." App. 115, l. 16 – 119, l. 7. Curry "repeatedly" told Coombs that he was going to kill him and that Coombs was "going to die tonight." App. 115, l. 24 – 25. Coombs "started head butting" Curry. App. 116, l. 1 – 9. Curry kept rolling and trying to cut Coombs. App. 116, l. 1 – 9. Coombs "was out of gas" and attributed Curry's strength, stamina, and ability to withstand multiple tazings to cocaine. App. 116, l. 14 – 118, l. 12.

But just at the point where Coombs thought he "was going to be murdered," Officer Dana Wallace ("Wallace") arrived and began tazing Curry. App. 118, l. 9 – 14. Coombs "hollered" to Wallace that Curry had a knife and Wallace grabbed Curry's knife hand. App. 119, l. 8 – 21. Curry was still threatening to kill Coombs. App. 119, l. 22 – 120, l. 5. Coombs told Wallace to hit Curry and Wallace "come with his free hand and hammer fist him in the head." App. 120, l. 1 – 14.

Wallace kept hitting Curry and Coombs was able to deliver "strikes to him," but Curry still did not drop the knife. App. 120, l. 6 – 14. The officers "continually hit him," and Curry finally told them he quit, but then began struggling again. App. 120, l. 15 – 20. Curry did this twice more, then dropped the knife and the officers took him into custody. App. 120, l. 15 – 21. Coombs "walked around the corner of the trailer and threw up." App. 122, l. 12 – 17. Curry said he "couldn't breathe," so the officers called for an ambulance. App. 123, l. 11 – 15. Wallace agreed with Coombs' account of the incident. App. 143, l. 14 – 145, l. 22.

Coombs was over six feet tall and said he tried to stay in good shape. App. 137, l. 13 – 18. Wallace was 5'10", also tried to stay in shape, and used to lift weights. App. 151, l. 14 – 20. Neither Coombs nor Wallace were cut with the knife. App. 137, l. 3 – 12. Wallace said on direct-examination that an ER doctor told him his hand was broken from hitting Curry, but on cross-examination admitted that an MRI showed no fracture. App. 147, l. 19 – 24. App. 152, l. 7 – 11. Curry had a rod in his left wrist from an old compound fracture. App. 185, l. 19 – 186, l. 11. Curry was about forty-five years old, 5'8" tall, and weighed 140 pounds at the time of the incident. App. 189, l. 7 – 17.

Shiquan saw Coombs taze Curry. App. 94, l. 5 – 15. Curry still held the knife. App. 94, l. 5 – 15. He fell to the floor. App. 94, l. 22 – 24. Shiquan saw Coombs and Curry "struggling with the knife on the floor." App. 95, l. 5 – 18. Wallace arrived and Shiquan said, "Well, after that he had to, you know, get roughed up to get the handcuffs on him." App. 97, l. 20 – 24. On cross-examination, Shiquan initially said she did not see Curry try to stab Coombs, but then backed off and said "I guess [Curry] was trying to stab him if they were struggling." App. 102, l. 7 – 103, l. 9. She saw Wallace "beating on [Curry] with his fist." App. 104, l. 1 – 8.

Wright saw Coombs kick in the door and taze Curry. App. 71, l. 4 – 16. Wright immediately ran out of the room and did not see a struggle. App. 71, l. 10 – 24. From the kitchen, she could hear the tazers and Curry screaming her name. App. 81, l. 4 – 24. When Wallace arrived, she saw him repeatedly punch Curry. App. 82, l. 13 – 11.

Curry testified in his own defense and admitted being intoxicated, slapping Wright, and fighting with Wright and Shiquan. App. 177, l. 11 – 180, l. 8. Curry said he was in the bedroom with Wright and was calming down when he heard someone outside the door calling his name.

App. 180, l. 9 – 20. Curry admitted he still had the knife in his hand when Coombs pushed the door open. App. 180, l. 9 – 181, l. 2.

Curry said he attempted "to move my hand to get rid of the knife, but before I got a chance to move any further than just a foot he had shot me with the tazer." App. 181, l. 12 – 19. Curry fell face first on the floor with his arms underneath him. App. 182, l. 5 – 16. The inside of his head "was gurgling." App. 182, l. 17 – 25. Coombs described his tazer as having "50,000 volts, but it's the middle amps that's the dangerous part." App. 134, l. 8 – 11. The initial dose of electricity from the tazer lasted five seconds. App. 134, l. 4 – 7.

Curry said when he started coming out of the first shock, he heard Coombs tell him to drop the knife. App. 183, l. 3 – 9. Curry tried to speak, but did not remember what he said and Coombs shocked him again. App. 183, l. 3 – 9. Coombs walked toward Curry and shocked him again. App. 183, l. 8 – 18. Curry lifted his hand, but Coombs put his foot on his hand. App. 183, l. 12 – 22. Curry lifted his head and then got head butted. App. 184, l. 9 – 13.

Curry said he was trying to get Coombs off of him when Wallace arrived and tazed him in the stomach. App. 184, l. 10 – 22. Wallace began punching him in the face and Curry yelled for Wright. App. 184, l. 18 – 22. The officers handcuffed Curry. App. 184, l. 24 – 185, l. 2. Curry said, "But I never had the knife." App. 185, l. 3 – 4. He dropped it after he got tazed. App. 197, l. 7 – 9. He denied ever trying to stab anyone that night. App. 187, l. 5 – 7. Defense counsel asked Coombs if he or Wallace were "grazed by the knife," and Coombs said, "No, sir," but added that it pressed against his vest. App. 137, l. 3 – 9.

The jury acquitted Curry of the domestic violence charge as to Wright and the attempted murder charge as to Coombs. App. 264, l. 8 – 21. The jury convicted Wright of the lesser-included offense of first-degree assault and battery as to Coombs, second-degree assault and

battery as to Shiquan, and resisting arrest with a deadly weapon. App. 264, l. 8 – 21. Judge Burch imposed consecutive sentences for a total of twenty-one and a half years. App. 274, l. 6 – 13.

The Post-Conviction Relief Proceedings

At the PCR hearing, the Attorney General informed the Court that one of Curry's allegations was that trial counsel failed to object during solicitor Kenard Redmond's opening statement. App. 324, l. 10 – 16. Curry read from the trial transcript the objectionable remarks by the solicitor at the hearing. App. 329, l.13 – 330, l. 13. Curry stated the solicitor's statements prejudiced the jurors against him. App. 330, l. 14 – 331, l. 11.

The portions of the solicitor's opening statement referred to at the PCR hearing were as follows:

> Let me just say this: We rely on law enforcement to protect and serve. There's a problem, we feel threatened, we call 911 and law enforcement arrives. We rely on them. But **we also owe them**, and by that I mean that in a situation like this when you have a defendant that endeavors to take the life of a law enforcement officer **we all should regard that as a slap against all of us. As a strike against all of us because we have asked them to serve and protect us.** And then we find ourselves faced in a courtroom today because this defendant, rather than respecting the authority and submitting to an arrest, that was lawful decided to in essence take—try to take the life of Sergeant Coombs.
>
> **So this is our chance to protect them and thank them for protecting us.**

App. 51, l. 19 – 52, l. 8 (emphasis added).

At the PCR hearing, the Attorney General asked Curry on cross-examination whether "the failure to object prejudiced you." App. 336, l. 2 – 5. Curry replied, "It didn't prejudice me." App. 336, l. 6. The Attorney General asked again, "The failure to object didn't prejudice you?" App. 336, l. 7. Curry responded, "What do you mean did it prejudice me? It didn't prejudice me. I was the one on trial." On re-direct, Curry said the prejudicial statements by the

solicitor influenced the jury's decision. App. 336, l. 16 – 23. The Attorney General argued at the conclusion of the hearing that Curry had made "a concession and he can't overcome the burden of proof." App. 353, l. 4 – 7. This argument made it into the Order signed by the PCR judge: "However, this Court notes Applicant credibly testified the statements did not actually prejudice him at trial." App. 365, n.3.

Trial counsel testified he could not remember why he did not object, and stated that he would if he "could do it all over again." App. 341, l. 13 – 25. On cross-examination, when asked his "custom when it comes to objecting to opening statements," trial counsel said he could not recall ever objecting to a lawyer's opening. App. 346, l. 19 – 347, l. 3. The Attorney General asked him that if he thought that the solicitor's statements "had been so prejudicial" in his mind, whether he would have objected and trial counsel agreed. App. 347, l. 17 – 24. He then asked, "using the strategy that we've discussed, you would have objected if you felt like there was something there," and trial counsel replied, "Right." App. 347, l. 25 – 348, l. 6.

The PCR court's order found no prejudice. App. 365-66. In addition to citing petitioner's supposed concession, the PCR court found that because the jury acquitted petitioner of attempted murder, the jury must have concluded that Curry "did not try to take the life of Sergeant Combs. [sic]" App. 366. The court also found no reasonable probability that the improper statements "undermined the outcome of this trial." App. 366.

Discussion

Trial counsel missed an obvious objection to the solicitor's highly improper argument and the PCR court erred by finding the error did not prejudice Curry.[1] The solicitor's argument violated the "Golden Rule" by repeatedly stating that "we" rely on law enforcement and "we" owe law enforcement and the defendant's actions were a "slap against all of us." "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006), overruled by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). The solicitor also asked the jury to make a decision based on passion and bias instead of the evidence and law in the case by telling them it was their chance to thank law enforcement by rendering a guilty verdict. A solicitor must confine himself to the record and not appeal to personal bias, passion, or prejudice. See Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010).

This Court held that the failure to object to an improper Golden Rule argument was deficient performance in Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009). Brown was a child sexual abuse case. Brown at 511-12, 680 S.E.2d at 912-13. The solicitor asked the jury in closing to "speak up" for the victim. Id. This Court held that asking the jury to "speak up" for the victim was a Golden Rule violation and was improper argument. Id. at 516-17, 680

[1] The twisting of Curry's testimony at the PCR hearing about prejudice into a concession should not give this Court much confidence in the PCR court's Order. App. 365, n.3. No reasonable, objective review of Curry's testimony at the PCR hearing can lead to the conclusion that Curry "credibly testified the statements did not actually prejudice him at trial." App. 365, n.3. Curry misunderstood the Attorney General's use of a legal term and his answer ("It didn't prejudice me. I was the one on trial.") showed he thought the question was nonsense. App. 336, l. 2 – 9. Curry's attorney immediately clarified the question, asking whether the jury was influenced by the prejudicial statements. App. 336, l. 16 – 23. Nothing supports the PCR court's acceptance of the Attorney General's "concession" argument and the deference this Court normally owes to the findings below should be applied skeptically in light of this substantial error.

S.E.2d at 915. The Brown Court held that the improper argument "undeniably asked the jurors to set aside their impartiality and, instead, consider the evidence from the subjective position of the child victim." Id.

Asking a jury to "speak up" for a victim led to a reversal on direct appeal in Reese. Reese at 37-39, 633 S.E.2d at 901-02. After asking repeatedly "who speaks for" the victim, the solicitor told the jury, "You do. . . . You can speak for her with your verdict." Id. The Reese Court found the argument improper and reversed because the State did not present overwhelming evidence of guilt. Id.

No difference exists between asking jurors to "speak for" a victim and asking them to thank all police officers with a guilty verdict. Here, the solicitor used "we and "us" and "our" multiple times in his remarks. See State v. McDaniel, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995) ("In her closing argument, the solicitor used 'you' or a form of 'you' some forty-five times, asking the jury to put themselves in the place of the victim."). He said "we call 911" and "We rely on them," and "we also owe them." App. 51, l. 19 – 52, l. 8. He made the jury into the victims by telling them that petitioner's actions were "a slap against all of us." App. 51, l. 19 – 52, l. 8. He told the jury that the trial was "our chance to protect them and thank them for protecting us." This argument violated the Golden Rule and trial counsel should have objected. See Roy v. State, 152 P.3d 217, 232 (Okla. Ct. Crim. App. 2006) (holding that a prosecutor's remarks simply thanking the jury for their service on behalf of law enforcement and the victims were improper because it aligned the state with the parties.).

The Supreme Court of Illinois dealt with a similar improper argument appealing to jurors' sense of loyalty to the police in People v. Blue, 724 N.E.2d 920, 934-38 (Ill. 2000). The defendants in Blue were charged with the shootings of police officers in Chicago. Blue, 724

N.E.2d at 924-27. The prosecutor told the jury that "Every Chicago police officer . . . from the superintendent down to the newest rookie and every police officer in this state needs to hear from you right now. . . . That while they serve and protect us we will serve and protect them." Id. at 934-38. The court held that nothing in the prosecutor's argument "tended to make the fact of defendant's guilt more or less true." Id. The court called the improper argument "a transparent play to the jury's sympathy and loyalty to law enforcement." Id. The court reversed the defendant's convictions based in part on the improper argument. Id.

The solicitor's comments here about "our chance to protect them and thank them for protecting us" are identical to the "transparent" appeals to the jury's sympathy for law enforcement in Blue. The transparency of the improper appeal and violation of the Golden Rule demonstrates that failing to object constituted deficient performance.

Curry demonstrated Sixth Amendment prejudice. See Strickland v. Washington, 466 U.S. 668 (1984). The solicitor gave the jury an extraneous duty to consider which bore no relation to the burden of proof or the applicable law. The Supreme Court of Mississippi reversed a manslaughter conviction after recognizing the effect of such an improper argument in Sheppard v. State, 777 So.2d 659, 660 (Miss. 2000). The prosecutor in Sheppard told the jury that if they acquitted, he wanted them to call him and tell them their reasons for crediting the defense witnesses' testimony so he could explain it to the victim's family. Sheppard, 777 So.2d at 661. The court found that the "only legitimate purpose" of the prosecutor's statements was to "suggest to the jury that it would be accountable to the prosecution and the victim's family for its decision and that the jurors could be required to justify a verdict of not guilty." Id. The court held that the "natural and probable effect of the prosecutor's improper statements **was the creation in the minds of the jurors of an extra-legal burden of accountability** to the State prejudicial to the

rights of the accused." Id. (emphasis added). In Curry's case, the solicitor created a similar extra-legal burden of accountability to the police with the carrot of asking the jurors to thank the police and the stick of suggesting that if they acquitted Curry, the police would be less likely to answer calls for help.

Similar to Reese, no overwhelming evidence of guilt exists. Petitioner testified that he tried to drop the knife when he saw the police officer, but the successive multiple tazings and beatings did not give him a chance. The trial was a credibility contest between Curry and the officers. See Tappeiner v. State, 416 S.C. 239, 253, 785 S.E.2d 471, 478 (2016) (reversing in a PCR case because of a failure to object to improper argument because trial was a credibility contest and no overwhelming evidence of guilt existed). The jury did not believe the officers' testimony in full because they acquitted Curry of attempted murder. The repeated appeals to the jury's loyalty to the police likely led to petitioner's convictions and certainly undermines confidence in this verdict.

Nor were the solicitor's remarks in the opening statement isolated. See Von Dohlen v. State, 360 S.C. 598, 613, 602 S.E.2d 738, 746 (2004) ("The solicitor's single comment, although improper, did not so infect the trial with unfairness as to make the resulting conviction a denial of due process."). Likely emboldened by trial counsel's failure to object during opening, Solicitor Redmond returned to this improper theme in his closing argument. App. 224, l. 11 – 226, l. 8. He spent approximately two pages of the transcript on the service of police officers. App. 224, l. 11 – 226, l. 8.

The solicitor again told the jury "this is one way that we can protect those who protect us." App. 224, l. 11 – 226, l. 8. He talked about how people still thanked him for his own service in the Navy twenty years ago. App. 224, l. 11 – 226, l. 8. He told the jury that "it is up

to us as citizens and you as a jury . . . that we send a very loud and clear message" of support to the police so they would "come and answer the call when we are in trouble." App. 224, l. 11 – 226, l. 8. He continued to use the pronoun "we" and said the jury should consider what "we" ask of police officers when considering the defendant's actions. App. 224, l. 11 – 226, l. 8. Then, tacitly acknowledging that none of the foregoing had anything to do with petitioner's guilt, the solicitor said, "Let's move on into the actual facts of the case itself." App. 226, l. 9 – 10. In both opening and closing, the solicitor made transparent appeals to the jury's loyalty to the police and trial counsel did nothing. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant the petition and ultimately reverse petitioner's convictions and remand for a new trial.

This 23rd day of July, 2020.

s/David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and Appendix in the above-referenced case have been served Chelsea Marto, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Petition for Writ of Certiorari and Appendix have been served on Julius Calvin Curry, #327963, Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 23rd day of July, 2020.

s/David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER