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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Colleton County

Honorable Thomas A. Russo, Circuit Court Judge

MACK WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000182

BRIEF OF PETITIONER

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ISSUE PRESENTED

Did the PCR Court err in denying Petitioner relief, where trial counsel failed to preserve the issue of an improper and prejudicial closing argument by the State, where the assistant solicitor referred to a pattern of conduct and asked the jury "Who among us is safe" from Petitioner at the conclusion of the argument, where trial counsel failed to request and accept a curative instruction, and where the PCR court found the issue unpreserved?

STATEMENT

Mack Washington was indicted by a Colleton County grand jury for two counts of armed robbery, two counts of kidnapping, and one count of possession of a weapon during the commission of a violent crime. App. 702 – 710. He proceeded to trial on March 17, 2014 before the Honorable Perry M. Buckner, III and a jury. App. 1. Petitioner was represented by Everett Bennett and Laurie Sanders, and Tameaka Legette and Carra Henderson appeared on behalf of the State. App. 1.

The jury found Petitioner guilty as indicted. App. 532 l. 21 – App. 533 l. 13. Judge Buckner sentenced him to thirty years on each of the armed robbery and kidnapping charges, concurrent. App. 546 l. 12 – App. 547 l. 20. Petitioner received a five-year sentence on the weapon charge which was crafted to be served consecutively. Id. Petitioner's probation was also revoked in full and as a result added five years, concurrent, to his sentence. Id. App. 547 ll. 22 – 25.

Petitioner's direct appeal was dismissed pursuant to Anders v. California, 386 U.S. 738 (1967). On April 7, 2016, he filed an application for post-conviction relief. App. 550 – 563. He alleged ineffective assistance of trial counsel, including an allegation that "[t]rial counsel failed to protect Applicant's right to a fair and impartial trial when he declined the judge's offer to give a curative instruction to the jury to disregard the solicitor's statements that Applicant had a 'pattern' of 'manipulating young people and luring them and intimidating them,' a 'pattern' of violence," and other similar comments. App. 561.

The State made its Return on or about April 19, 2017. App. 564. An evidentiary hearing was held before the Honorable Thomas A. Russo on October 11, 2017. App. 570. Petitioner was represented by James Falk, and Ruston Neely appeared on behalf of the State. The PCR

court heard testimony from Petitioner, an alibi witness named Loretta Beckett, trial counsel, and the assistant solicitor.

By way of a written Order of Dismissal, the PCR court denied relief on January 10, 2018. App. 685. The PCR court found that although counsel failed to preserve the issue of the State's allegedly improper closing argument remarks, Petitioner failed to prove the that the failure to request a curative instruction prejudiced Petitioner such that there was a reasonable probability that the result of the trial or appeal would have been different. App. 696 – 699.

A Petition for Writ of Certiorari was filed with the South Carolina Supreme Court on or about September 24, 2018. The State filed its Return on January 22, 2019. The case was transferred to this Court by way of an Order dated February 6, 2019. Certiorari was granted on April 21, 2021.

This Brief of Petitioner follows.

STANDARD OF REVIEW

Appellate courts defer to a PCR court's findings of fact and will uphold them if there is any evidence of probative value in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, if there is no evidence to support the PCR court's ruling, appellate courts will reverse. Pierce v. State, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000) (citation omitted). Questions of law are reviewed de novo, with no deference to trial courts. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018); 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)).

ARGUMENT

The PCR Court erred in denying Petitioner relief, where trial counsel failed to preserve the issue of an improper and prejudicial closing argument by the State, where the assistant solicitor referred to a pattern of conduct and asked the jury "Who among us is safe" from Petitioner at the conclusion of the argument, where trial counsel failed to request and accept a curative instruction, and where the PCR court found the issue unpreserved.

Relevant facts

During the State's closing argument, the assistant solicitor advised the jury that "the State is simply seeking the truth, a just verdict." App. 480 ll. 11 – 118. Nearing the conclusion of closing arguments, the assistant solicitor made the below objectionable remarks, prompting a motion for mistrial by defense counsel:

> Ladies and gentlemen, I told you in the beginning that when it's all over and done, I will come back before you, leaving you with one option. By now, the reasonable doubt has been put aside. There is no reasonable doubt. The robe of righteousness that he wore when he walked in here is gone. It is a filthy rag, ladies and gentlemen. Mack Washington has ... a **pattern** of manipulating young people and luring them and intimidating them. He has a **pattern** of violence, throwing Tyneshia Young to the floor and intimidating and manipulating her into lying for him. He has a **pattern** of robbing old folks, intimidating old folks, kidnapping old folks, holding them up. And also, trying to manipulate Captain Jamison.
>
> I ask you, this day, **who is safe from the force that is Mack Washington, Jr.? Who among us is safe, ladies and gentlemen?** I told you I would ask you. I ask you now, I beseech you now, to find Mack Washington, Jr., guilty ... because then and then only, ladies and gentlemen, will Mack Washington cease from trouble. And the weary traveler can finally be at rest. Thank you.

App. 495 l. 25 – App. 496 l. 22 (emphasis added). Defense counsel moved for a mistrial "on the basis that ... Assistant Solicitor Legette's closing argument was improper in that she told the jury that ... Washington [ ] had a pattern for robbing old people." App. 497 l. 18 – App. 500 l. 2.

Citing the grounds for a mistrial, counsel noted that a pattern "is not just one time. A pattern is something that is repeated." App. 497 l. 18 – App. 498 l. 7. Counsel argued that the assistant solicitor's remarks "implie[d] to the jury that [Petitioner] had a prior record of robbing old people." Id. Counsel did not object to the State's Golden Rule argument and did not make any post-trial motions. App. 535 ll. 8 – 17.

Petitioner was on trial following events which took place on January 7, 2012. Joan Klem testified that she and her husband, Frank, were driving from Michigan to their winter home in Florida. App. 218 ll. 2 – 24. They stopped in Walterboro, South Carolina, and checked into the Rice Planters Inn. App. 220 ll. 2 – 11. When the Klems reached their hotel room, "two men were at the door." App. 220 ll. 18 – 19. One man grabbed her at her waist and held a knife near her. App. 220 ll. 23 – 24. The other man demanded her purse and car keys. App. 220 l. 25 – App. 221 l 2.

After taking the purse, wallet, and car keys from the room, the two men "took off running and immediately got in the car and left." App. 223 ll. 13 – 14. Frank Klem ran to the hotel's main office and called the police. App. 223 ll. 20 – 22.

Jason Chapman, a lieutenant with the Colleton County Sheriff's Office, investigated the case. App. 313 ll. 16 – 18. On January 8, 2012, he received a call from an informant. The informant told him that two guns that were taken during the armed robbery at the Rice Planters Inn may be located inside a Druid Hills apartment. App. 314 ll. 3 – 8.

After speaking to Tyneshia Young, Chapman and other officers went into her apartment and recovered the two guns. App. 323 ll. 6 – 9. Tyneshia Young testified that she and Petitioner were "close friends." App. 288 ll. 21 – 24. Petitioner had a key to her Druid Hills apartment in Walterboro and would "hang out" there almost every other day. App. 289 ll. 18 – 24. Young

claimed that on the night of January 8, 2012 Petitioner came over to her apartment. She heard a knock at the door and asked Petitioner who was there. App. 294 ll. 1 – 2. He said "[n]obody." After hearing another knock on the door, she looked out of the peephole and saw the police outside. App. 294 ll. 2 – 4.

After speaking with her mother and Chapman, Young opened the door and allowed the police to come inside and take the guns. App. 297 ll. 10 – 11. Law enforcement identified the two guns as belonging to the Klems. App. 323 ll. 9 – 11. Young ultimately gave a statement that Petitioner and his co-defendant, Tyheem Lewis, brought the guns to her apartment. App. 335 l. 24 – App. 336 l. 2.

Based on the statement from Tyneshia Young that Tyheem Lewis and Petitioner brought the guns to her apartment, Chapman interviewed Lewis. App. 335 l. 20 – App. 336 l. 21. Lewis admitted to robbing the Klems and was charged with armed robbery, kidnapping, and possession of a weapon during a violent crime. App. 338 ll. 1 – 12. Lewis pled guilty to strong arm robbery and was sentenced under the Youthful Offender Act[1] for a term not to exceed six years. App. 375 ll. 17 – App. 376 l. 2. Chapman charged Petitioner with armed robbery, kidnapping, and possession of a weapon during a violent crime. App. 338 ll. 7 – 12.

Lewis testified against Petitioner at trial, claiming Petitioner was the mastermind of the robbery and the one holding the knife on Joan Klem. App. 360 l. 11 – App. 361 l. 23. According to Lewis, they found the guns inside the trunk of the car. App. 372 ll. 2 – 3. After throwing away the clothes that were in the car, he and Petitioner dropped the guns off at Young's apartment. App. 373 ll. 2 – 9. Then, they drove to "the village" to park the car until the next day. App. 373 ll. 19 – 21.

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[1] S.C. Code Ann. §§ 24-19-10 to -160 (1976).

After the jury published its guilty verdicts, the assistant solicitor spoke about Petitioner's prior record which included home break-ins and thefts resulting in multiple burglary convictions. App. 536 l. 12 – App. 539 l. 5. As a result, during the sentencing phase, the trial judge spoke to Petitioner regarding his prior record, noting that he charged the jury that Petitioner's failure to testify could not be used against him, because the judge did not want "the jury finding you guilty because you had a record." App. 545 l. 10 – App. 546 l. 11. The resulting sentence of thirty-five years was partially a product of Petitioner's prior record, as evidenced by the trial judge's remarks to Petitioner: "I wanted them to decide on the evidence, but you can't escape the fact that you have four burglaries, you have robberies, and you cannot evade the fact that the jury heard ... that people that came to our community ... were robbed at knifepoint." Id.

At the evidentiary hearing in his PCR matter, Petitioner testified about his concerns surrounding the State's improper closing argument. App. 594 l. 15 – App. 597 l. 5. Petitioner indicated that because he did not testify at trial, the jury had no knowledge of his criminal record. Id. Therefore, it was unclear what pattern, other than perhaps his prior record, which the assistant solicitor was referencing. Id. Petitioner addressed how those improper remarks prejudiced him:

> [W]hen she said I had a pattern ... I mean, I never testified. I never got on the stand. But she put my character in play when she said I had a pattern. Because, now, it's the last thing the jurors heard before the went in the back. So [s]he's saying a pattern, there's more than one crime, it's more than one night.
>
> That night, only two - - alleged - - two people got robbed that night. When she said I had a pattern of robbing people, a pattern is someone going on the past. Either I robbed more than one person that night, or ... I got a pattern, that means I got a record of it. So she put my character [in the record] and I never testified. I never took the stand.

App. 59 ll. 1 – 19. Petitioner indicated that the event giving rise to his arrest was one all incident and therefore was not a pattern. App. 596 l. 20 – App. 597 l. 5.

Trial counsel testified at the PCR hearing regarding his representation. App. 622 – 654. He was appointed to Petitioner's case on September 17, 2013. App. 622 ll. 16 – 19. Regarding the State's closing argument, counsel testified that he moved for a mistrial "based on her whole closing argument, [b]ecause she talked about him having a pattern of luring young people." App. 634 l. 20 – App. 637 l. 7. He offered the following reasoning for the mistrial motion:

> I made a motion for mistrial, because she kept talking about [how] he had a pattern of robbing elderly people, and luring and manipulating young people, and I thought that was over the edge. And so that's why I made the motion for a mistrial. And I actually think that should have been granted, to be honest with you. And that Judge Buckner, for whatever reason, he didn't grant it.
>
> And so, you know, I was stuck with that. I don't know if he argued that on appeal. But it seemed to me that would have been a good grounds, you know, for the appellate court. I know that an appeal was filed for him. But I didn't read the whole record on appeal, but it seems like that would have been a valid ground for - - on appeal.

App. 634 l. 14 – App. 635 l. 1. Regarding the "who among us is safe, ladies and gentlemen" comment, counsel testified that the assistant solicitor "skirted the edge a little bit, [a]nd that's why I made a motion for mistrial." App. 635 ll. 2 – 6. Counsel repeatedly impressed upon the PCR court the merits of this issue:

> But I'll be honest with you, when she started talking about pattern, I thought I had a slam dunk, motion for a mistrial was a hit. And so that was the main thing, I just felt sure that Judge Buckner would grant it, because I thought she had, I thought she had clearly crossed the line there, when she started talking about a pattern and ... he didn't take the stand. And so I was kind of very surprised when that wasn't granted.
>
> And, you know, as a trial lawyer, you know, you get excited about things like that because you don't often get that opportunity. You know, it doesn't happen a lot. And so I was very disappointed when that wasn't granted.

App. 635 ll. 9 – 20. PCR counsel remarked upon South Carolina's strict error preservation rules and inquired of trial counsel what the rule is "for preserving an objection to an argument, an inflammatory closing argument?" App. 636 ll. 4 – 19. Counsel responded that he was aware

that attorneys can object during a closing argument. Id. He then admitted that he was not an appellate attorney and had never handled an appeal: "So I don't know where that plays out, but that's my bag. I don't do appeals." App. 637 ll. 4 – 7.

On cross-examination, counsel testified that he did not want the jury to hear again any of the objectionable statement. App. 643 ll. 11 – 23. Referring to the decision not to accept the curative instruction and thereby not preserving this issue for direct appeal, trial counsel suggested it was a "trial strategy decision." Id. Notably, counsel remarked that he would have accepted the curative instruction had he objected contemporaneously to the prejudicial comments. App. 643 l. 24 – App. 644 l. 13.

During re-direct examination, counsel testified that he did not include in his objection and reference to the "who among us is safe, ladies and gentlemen" question. App. 647 ll. 21 – 24. Regardless, counsel believed he had "a pretty meritorious actual ground for a motion for a mistrial." App. 648 ll. 2 – 12.

Counsel conceded that he could have drafted a curative instruction and proposed it to the trial court in order to counteract the prejudicial remarks uttered by the assistant solicitor as the last words heard by either attorney prior to deliberating:

> Yeah, I could have asked for that. But between me and you, I don't know if anybody has ever done any research on it, I don't - - you know, I know curative instructions sound good, but do you really think a jury is going to say, well, I'm just forgetting all that then. I mean, does anybody really think that they do, even though the Judge tells them? I kind of think they don't, you know.
>
> Once a jury hears it, once the cat is out of the box, so to speak, I think it's out of the box. But it all sounds good in theory, you know, get a curative instruction. But does that really resolve it? I don't - - you know, that's why **I thought I should have been granted a mistrial**, because I don't think a curative instruction would have done - - I mean, it sounds good in theory, but the jury has already heard it, you know. And most people can't just erase their memory.

App. 650 l. 11 – App. 651 l. 1 (emphasis added).

Discussion

The assistant solicitor's inflammatory closing argument, including her objectionable language regarding a pattern of conduct by Petitioner and her cautionary words about not being safe from Petitioner, intimated and frightened the jury into a guilty verdict. A solicitor's argument that appeals to the personal biases of the jury and arouses their passions and prejudices violates due process. Tappeiner v. State, 416 S.C. 239, 250-51, 785 S.E.2d 471, 477 (2016); Donnelly v. DeChristoforo, 416 U.S. 637, 642 (1974). In this case, the solicitor capitalized not only on the jury's fear of robbery, but also on the unknown prior history of a criminal defendant who had not taken the stand.

"A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 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. at 609–10, 602 S.E.2d at 744.

" 'While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done.' " State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (quoting State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981)). " 'The solicitor's closing argument must, of course, be based on this principle.' " Id. "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).

"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." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). "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." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "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." Id.; see State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) ("A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.").

The solicitor's argument in this case is similar to the argument that caused reversal in State v. White, 246 S.C. 502, 144 S.E.2d 481 (1965). In White, the solicitor told the jury, "Let him go, let him come back to Williamsburg County. Let him come in your wife's bedroom or your mother or daughters, any of them, what would you do?" Id. at 504, 144 S.E.2d at 482. The Court reversed, holding that the effect of such an argument is to "completely destroy and nullify all sense of impartiality in a case of this kind." Id. at 506, 144 S.E.2d at 482. The Court criticized the solicitor for injecting "into the case considerations foreign to the record and calculated to take from the trial the necessary element of impartiality." Id. at 507, 144 S.E.2d at 483.

In a PCR case, the Mississippi Court of Appeals reversed, in part, for trial counsel's failure to object to a prosecutor's "back on the streets" argument. Bigner v. State, 822 So.2d 342, 349 (Miss. Ct. App. 2002). The prosecutor in Bigner told the jury, "And if you want to talk about holding your heads high when you go home, you want to let that man walk out back on the streets? Find him guilty." Id. See also United States v. Johnson, 968 F.2d 768, 770 (8th Cir.

1992) (finding that prosecutor telling the jury that they had "to 'stand as a bulwark against the continuation of what Mr. Johnson is doing on the street, putting poison on the streets,'" constituted reversible error).

In a habeas decision by the Fifth Circuit, the court found that introduction of the defendant's prior record required reversal. Wingate v. Wainwright, 464 F.2d 209, 215 (5th Cir. 1972). In reversing, the court noted the error was "quickened by the prosecutor's emphatic and improper argument." Id. The improper argument made by the prosecutor in Wingate was the same as here: "I am asking you not to allow this man to go back on the street and to redo those things that he has done." Id. at 210.

Failure to object to impermissible Golden Rule comments was addressed by in Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009), a PCR matter before the South Carolina Supreme Court. In Brown, the State asked the jury to speak up for the minor child in a criminal sexual conduct case. Id. at 511-2, 680 S.E.2d 909, 912. The Court concluded that the PCR judge "correctly concluded the solicitor's remarks were improper in that they amounted to an impermissible 'Golden Rule' type argument." Id. at 516, 680 S.E.2d at 915 (internal citations omitted). In light of this improper closing argument, the Brown Court indicated that trial counsel should have objected to the closing remarks and held that counsel's "trial strategy" of not objecting as to avoid "exacerbat[ing] a bad set of facts" could not be construed as a valid strategy given the evident impropriety of the solicitor's remarks. Id. at 517, 680 S.E.2d 915.

Therefore, our Supreme Court Court in Brown held trial counsel deficient for failing to object to object to the State's Golden Rule argument which impermissibly appealed to the passion of the jurors. Id. Brown's case can be distinguished from the matter *sub judice* regarding prejudice.

PCR counsel in Petitioner's case argued at the close of the evidentiary hearing that trial counsel's objection to the closing argument was deficient and prejudicial:

> [H]is objection to the closing argument should have also included the inflammatory language ... 'who among us is safe, ladies and gentlemen,' [because] I think that's asking the juror not to decide on the merits of the case, but for just fear of this person, and therefore, wanting to get him put out of the community, not necessarily having anything to do with whether or not he was responsible for the crimes that he was charged with. And, therefore, I think that testimony was inflammatory.

App. 675 ll. 11 – 24,

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In order to prove that counsel was ineffective, the PCR applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). "Furthermore, when a defendant's conviction is challenged, 'the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt.' " Id. (quoting Strickland v. Washington, 466 U.S. 668, 695, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

This Court will uphold the findings of the PCR court if there is any evidence of probative value to support them. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). However,

if no probative evidence supports these findings, the Court will not uphold the findings of the PCR court. Jackson v. State, 355 S.C. 568, 570, 586 S.E.2d 562, 563 (2003). "The decision of the PCR judge may be reversed when it is controlled by an error of law." Hiott v. State, 381 S.C. 622, 625, 674 S.E.2d 491, 492 (2009).

Regarding this allegation, the PCR court seemingly found that counsel was deficient: "Counsel failed to preserve the issue for review because he refused the curative instruction." App. 697. Citing McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013), the Order of Dismissal noted that an issue found to be unpreserved may be raised in the context of post-conviction relief. Id. Inexplicably, however, counsel was not found to be deficient for failing to preserve this issue for direct appeal. See Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999) (finding trial counsel was deficient for failing to place his argument about the jury seeing his client in chains on the record, and thus failing to adequately preserve the issue for appeal). The issue, characterized by trial counsel repeatedly as meritorious was unable to be addressed on direct appeal because it was unpreserved.

A valid trial strategy cannot include failing to preserve a client's direct appeal. Suggesting otherwise opens the door to trial lawyers utilizing such a defense to justify almost any other deficiency. Not only that, but it is unclear from the record that trial counsel made an informed decision to avoid preserving this issue—having never handled an appeal, he was unaware of the effect of refusing a curative instruction. Since the remarks were truly as prejudicial as he suggested, Petitioner should have had an opportunity to argue on appeal that the trial judge erred by not granting a mistrial.

Prejudice can be shown in Petitioner's matter. There was no overwhelming evidence of guilt—neither of the complainants were able to identify him. The improper remarks were the last thing heard by the jury from either party before deliberations.

If the remarks were truly as egregious as counsel believed, he should have taken every step possible in order to preserve this issue for direct appeal. The merits of this issue were repeatedly expressed by an experienced trial attorney who had been practicing for over thirty years. App. 189 ll. 6 – 12. This witness, deemed credible by the PCR court, believed he had a "pretty meritorious actual ground for a motion for a mistrial" which could have been argued on direct appeal but for the failure to preserve the issue. In addition to being meritorious, counsel indicated the "pattern of robbing old people" remark was "most prejudicial." App. 649 ll. 17 – 24.

Multiple inflammatory remarks, both improper and prejudicial, were made near the end of the State's closing argument. Trial counsel failed to make a contemporaneous objection, object to the entirety of the improper statements, and failed to accept a curative instruction as required to preserve the issue for direct appeal.

CONCLUSION

Petitioner respectfully requests that this Court reverse the PCR court and grant him a new trial.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of May, 2021.