South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

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MEMORANDUM

TO: Circuit Court Judges & Summary Court Judges

FROM: Susan Widener, Staff Attorney

RE: State v. Michael Beatty

DATE: April 26, 2018

On April 25, 2018, the South Carolina Supreme Court issued a decision in the case of State v. Beatty following the grant of rehearing following its decision in State v. Beatty, Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29. 2016) (Shearouse 2017 Adv. Sh. No. 1 at 13), and reargument. The Court addressed two issues, one concerning certain language used in preliminary remarks to the jury and the second the order of closing arguments in a criminal case.

In addressing the first issue, the Court held:

We instruct trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State's burden of proof in a criminal case. Such language includes, but is not limited to, any language suggesting to the jury that its task is to "search for the truth" or to find "true facts," or that the jury should render a "just verdict."

On the second question, after reviewing the history of closing argument jurisprudence, the Court stated:

Our current closing argument rules consist of the following patchwork: Pursuant to the common law rule pronounced in *Brisbane*[1] and as clarified in *Garlington*, in cases in which no defendant introduces evidence, the defendant(s) have the right to open and close, but may waive the right to both or may waive opening and present full argument after the State's closing argument. Pursuant to the common law rule set forth in *Huckie*, if two or more defendants are jointly tried, if any one

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[1] Full citations to the cases cited in this paragraph are: *State v. Brisbane*, 2 S.C. L. (2 Bay) 451 (1802); *State v. Garlington*, 90 S.C. 138, 72 S.E. 564 (1911); *State v. Huckie*, 22 S.C. 298 (1885); and *State v. Gellis*, 158 S.C. 471, 155 S.E 849 (1930).

defendant introduces evidence, the State has the final closing argument. Pursuant to the common law rule as clarified in *Gellis*, in cases in which a defendant introduces evidence of any kind, even through a prosecution witness, the State has the final closing argument. However, in cases in which the State is entitled to the reply argument, there is no common law or codified rule as to whether the State must open in full on the law, or the facts, or both, or neither, and there is no rule governing the content of the State's reply argument.

....

Currently, there is no rule governing the content and order of closing arguments in criminal cases in which a defendant introduces evidence, except for the "constitutional rule" that a defendant's right to due process cannot be violated at any stage of a trial. Consequently, trial judges must, on a case-by-case basis, ensure that a defendant's due process rights are not violated during the closing argument stage. Absent authority to formally adopt procedural rules, our authority—and the authority of the trial court—is but to address due process considerations as they arise. In cases in which a defendant introduces evidence, trial judges clearly have the authority to require the State to open in full on the facts and the law and have the authority to restrict the State's reply argument to matters raised by the defense in closing. This authority remains in keeping with the trial judge's authority to ensure that a defendant's due process rights are not violated during a criminal trial. We remain mindful of the need for clearly articulated rules governing the content and order of closing arguments in cases in which a defendant introduces evidence. The uncertainty resulting from the absence of such rules is unfortunate. We hope the day will soon come when such rules are firmly in place.

The case may be read in full at:
http://www.sccourts.org/opinions/HTMLFiles/SC/27795.pdf

PLEASE BE AWARE THAT IN THE ABSENCE OF A COURT ORDER TO THE CONTRARY, DECISIONS OF THE COURT ARE NOT FINAL UNTIL THE TIME FOR REHEARING HAS EXPIRED, OR UNTIL THE PETITION FOR REHEARING IS ACTED UPON, WHICHEVER OCCURS LATER.