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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Petition for Writ of Certiorari to Pickens County
Honorable Edward W. Miller, Circuit Court Judge

JONATHAN MATTHEW HOLDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000057

REPLY BRIEF OF PETITIONER

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ARGUMENT IN REPLY

The solicitor's questions suggested a verdict on an improper basis. *Von Dohlen v. State*, 360 S.C. 598, 614, 602 S.E.2d 738, 746 (2004) (solicitor may not "improperly arouse the passions and prejudices of jurors, urging them to abandon their sworn role as fair and impartial arbiters of the facts and view the evidence from an improper perspective"); *see also Berger v. United States*, 295 U.S. 78, 88 (1935) (while a prosecutor "may strike hard blows, he is not at liberty to strike foul ones."). The State concedes the solicitor's questions were improper. *See* Brief of Respondent at 11.

However, the State argues that Petitioner was not prejudiced due to "Americans' rapid acceptance of homosexuality." *See* Brief of Respondent at 11. But less than ten years ago this Attorney General's Office filed an amicus brief in *Obergefell v. Hodges*, 576 U.S. 644 (2015), and argued homosexual people did not have a constitutional right to marry and equated homosexuality with incest and bigamy.[1] This State's Governor recently stated that he believed homosexual people should not be permitted to marry.[2] The United Methodist Church is currently in crisis over whether to allow LGBTQ marriage and clergy.[3] Homosexuality is still condemned by many.

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[1] Brief for South Carolina as Amicus Curiae in Support of Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015), 2015 WL 1519046, at 29.

[2] *See* Adcox, S. (2022, October 26) Gov. McMaster makes clear in debate he still opposes gay marriage. *The Post and Courier*. https://www.postandcourier.com/politics/gov-mcmaster-makes-clear-in-debate-he-still-opposes-gay-marriage/article_709610e2-5580-11ed-be4a-e753752e45bd.html.

[3] *See* Anderson, M. (2020, January 4) United Methodist Church announces proposal to split over gay marriage. *NPR*. https://www.npr.org/2020/01/04/793614135/united-methodist-church-announces-proposal-to-split-over-gay-marriage.

The prejudice to Petitioner was extreme. Criminal sexual conduct with a minor is a crime the mere allegation of which shocks the conscience of the typical juror. *See Kennedy v. Louisiana*, 554 U.S. 407, 439 (2008) (child rape is a crime that "in many cases will overwhelm a decent person's judgment"). A typical juror finds the idea of molesting a child to be unfathomable. If the jury had doubts about whether Petitioner committed these crimes, the solicitor supplied the jurors with an inflammatory suggestion for why he might have done so. The solicitor suggested Petitioner molested the minor because Petitioner was secretly gay and gay people molest children. App. 296, l. 22 – 297, l. 5.

It was egregious and improper for the solicitor to appeal to a specific and well-known (although unfounded) prejudice. *See* Choma, D., et. al., Transgender Rights Under Siege in Many State Legislatures-Including Minnesota's, *Bench & B. Minn.*, November 2021, at 18, 20 (noting contention that "LGBTQ people are more likely to engage in pedophilia" and "that a 'homosexual agenda' will destroy Christianity and society"); *State v. Bates*, 507 N.W.2d 847, 852 (Minn. Ct. App. 1993) ("The belief that homosexuals are attracted to prepubescent children is a baseless stereotype").

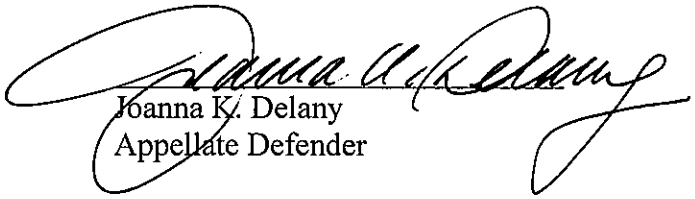
The prejudice was not dispelled by the court's curative instruction in this child sexual abuse case where the evidence was "weak," and the harm extreme. The case rested on the credibility of a mentally ill minor who was known to "lie and manipulate." App. 144, ll. 5-24. The trial judge in this case expressed surprise when the guilty verdicts were read, and the PCR judge noted this was a "weak" case. App. 352, ll. 12-15; App. 587. *See State v. Dawkins*, 297 S.C. 386, 393, 377 S.E.2d 298, 302 (1989) (trial judge did not abuse his discretion in denying mistrial where curative instruction was fully sufficient under the circumstances); *Vasquez v. State*, 388 S.C. 447, 464, 698 S.E.2d 561, 570 (2010) (counsel's failure to object to solicitor's

characterization of Muslim defendant as "domestic terrorist" and references to September 11th was prejudicial deficient performance). Counsel's performance was deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984).

CONCLUSION

For the foregoing reasons and those contained in Petitioner's principal brief, this Court should reverse the PCR court and grant Petitioner a new trial.

Respectfully submitted,



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This 2nd day of November, 2022.