

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas  
J. Mark Hayes, II, Circuit Court Judge

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Case No. 2017-CP-11-00801  
Appellate Case No. 2024-000128

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**RECEIVED**

**Oct 17 2024**

**S.C. SUPREME COURT**

Thomas Anthony Styla,

Respondent-Petitioner,

v.

State of South Carolina,

Petitioner-Respondent.

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REPLY OF RESPONDENT-PETITIONER TO  
RETURN OF PETITIONER-RESPONDENT TO  
PETITION FOR WRIT OF CERTIORARI  
OF RESPONDENT-PETITIONER

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## QUESTIONS PRESENTED

1. Did the circuit court err in denying post-conviction relief with respect to trial counsel's failure to object and request a mistrial on the basis of improper statements made by the prosecution in closing argument?
2. Did the circuit court err in denying post-conviction relief with respect to trial counsel's failure to place on the record the objections, arguments, and rulings made in bench conferences not recorded and transcribed by the court reporter?
3. Did the circuit court err in denying post-conviction relief with respect to trial counsel's failure to object to evidence of the defendant's other alleged bad acts?

## ARGUMENT IN REPLY

Petitioner-Respondent, Thomas Anthony Styla (referred to herein as "Applicant"), raised the above-stated questions in his petition for writ of certiorari.<sup>1</sup> He adheres to all the arguments contained in that petition and submits this reply to address specific arguments made by the State in its return.

### I. THE CIRCUIT COURT ERRED IN DENYING POST-CONVICTION RELIEF BASED ON TRIAL COUNSEL'S FAILURE TO OBJECT AND REQUEST A MISTRIAL DUE TO THE PROSECUTION'S IMPROPER ARGUMENT.

Applicant challenged the PCR court's failure to find counsel was ineffective in failing to object to the prosecutor's assertions of his personal belief as to the truthfulness

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<sup>1</sup> Simultaneously with the filing of this reply, Applicant is filing an amended petition for a writ of certiorari, together with a motion to amend and to have the Court accept the amended petition. The purpose of the amendment is to correct one erroneous date recited in the petition and to add citations to the appendix paging, which was not available to Applicant at the time he filed his petition for writ of certiorari because it had not yet been filed and served on Applicant by the State. The amended petition does not change the substance of the original petition. In this reply, the petition, or the amended petition if it is accepted by the Court, is referred to as the "petition" and is cited as "Petition."

of witnesses, and in failing to move for a mistrial on the basis of those improper comments and the prosecutor's additional statement of his personal belief as to the defendant's guilt. The specific comments are quoted in Applicant's petition and are referenced herein, as they were by the PCR court, as the first, second, third, and fourth remarks. The first three remarks were statements of the assistant solicitor's personal belief that witnesses were truthful. These statements violated the admonition contained in this Court's precedents that prosecutors may not vouch for or give personal assurances as to the credibility and veracity of their witnesses. *See State v. Busse*, 439 S.C. 104, 109-10, 886 S.E.2d 208, 211 (2023); *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004); *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001); *State v. Kelly*, 343 S.C. 350, 368-69, 540 S.E.2d 851, 860-61 (2001), *rev'd on other grounds*, 534 U.S. 246 (2002); *see also* Rule 407, SCACR, Rule 3.4(e). The fourth, in relevant part, was the statement of the assistant solicitor: "I am thoroughly convinced beyond any doubt in my mind that he is guilty." App. p. 461, lines 3-5. This statement violated the admonition that the prosecutor cannot state his personal opinion as to the merits of the case or the guilt of the defendant. *See Fortune v. State*, 428 S.C. 545, 552-53, 837 S.E.2d 37, 41 (2019); *State v. Sloan*, 278 S.C. 435, 438, 298 S.E.2d 92, 93 (1982); *see also* Rule 407, SCACR, Rule 3.4(e). Under clear principles articulated in both the case law and the disciplinary rules, the prosecutor's comments were improper, and trial counsel's failure to object to three of those comments and seek a mistrial on the basis of all four comments was deficient performance.

The State's return presents several theories to support the PCR court's finding that there was no deficient performance in counsel's handling of these remarks. Two of those

theories pertain to the first three remarks. First, the State posits that it is “likely” counsel did not object “because [the comments] were more akin to proper comments on the weight to be given to the testimony rather than actual vouching.” *See* Return, p. 16. However, in his testimony at the PCR hearing, counsel did *not* state that was his reason for not objecting. This justification offered by the State is not supported by any evidence in the record.

Second, the State argues the prosecutor “did not indicate a personal belief in the credibility of the witnesses . . .” Return, p. 16. To the contrary, the first, second, and third remarks clearly were indications of the prosecutor’s personal belief as to truthfulness. Those comments, in relevant part, were the following:

I believe what we put up was honest, was truthful . . .

App. p. 444, lines 14-15 (first remark).

The witnesses we did call were truthful witnesses.

App. p. 451, line 7 (second remark).

. . . Because it’s the truth . . .

App. p. 457, line 13 (third remark). Contrary to the first and second justifications given by the State, these comments were expressions of personal belief as to truthfulness. Contrary to the first justification given by the State, they were not merely comments on the weight to be given to the testimony.

The third justification given by the State pertains only to the fourth remark, to which counsel did object. The State argues counsel made a strategic decision to accept the court’s curative charge with respect to the fourth remark. This justification, however, does not apply to the first, second, and third remarks, as to which no objection was made

and as to which no curative charge was given. The PCR court's finding that there was no deficient performance as to the first, second, and third remarks is not supported by any evidence and is erroneous. The first three remarks were clear statements of personal belief as to truthfulness. Counsel did not object, and counsel did not articulate a strategic reason for his failure to object to those remarks. In fact, counsel testified that he should have moved for a mistrial based on the fourth remark but also based on the totality of the prosecutor's argument that included the three additional remarks. App. p. 633, lines 5-12. Based on the evidence presented at the PCR hearing, there was no strategic reason given for not objecting and for not moving for a mistrial on the basis of the first, second, and third remarks, and the PCR court committed reversible error in finding counsel did not render deficient performance with respect to those three remarks.

As to the fourth remark – the prosecutor's statement he was thoroughly convinced beyond any doubt in his own mind of the defendant's guilt – both the PCR court and the State conceded the impropriety of the remark. The PCR court held, and the State continues to assert, that counsel's failure to seek a mistrial and instead to accept a curative charge was a reasonable strategic decision and therefore not deficient performance. Under the circumstances of this case, the decision not to move for a mistrial cannot be deemed reasonable strategy. The case turned entirely on credibility. The verdict would be based entirely on who the jury believed – the complaining witness or the defendant. The fourth remark went far beyond a comment on credibility, with the prosecutor emphatically declaring to the jury he personally was “thoroughly convinced” and “beyond any doubt” in his “own mind” that the defendant was guilty. The comment was far more egregious than a simple statement by an attorney as to a witness's

credibility. It was a comment on the entire case, by the representative of the government, and it placed the imprimatur of the government upon a conclusion as to the defendant's guilt. A curative charge could not remove the taint of such a comment. Upon the unique facts presented here, counsel's decision to rely on a curative charge and not seek a mistrial cannot be deemed a valid strategy, under the objective standard of reasonableness articulated in *Strickland v. Washington*, 466 U.S. 668, 688 (1984). See *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (counsel must articulate an objectively reasonable trial strategy to avoid a finding of ineffectiveness); *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (same). The PCR court erred in finding counsel's performance with respect to the fourth remark was not deficient.

The State argues the trial court would not have taken the "extreme measure" of granting a mistrial in lieu of the curative instruction, had counsel moved for a mistrial. See Return, p. 16. Applicant submits the grant of a mistrial – while an extreme measure under most circumstances – was the only adequate remedy in the face of such a blatant violation of the prohibition on such comment contained in the case law and the disciplinary rules, and in light of the resulting prejudice inherent in such an egregious, improper comment by a prosecutor. Moreover, had counsel also objected to the other three improper remarks, not just the fourth, and argued that taken together they were so prejudicial that a curative charge could not remove the taint resulting from the *repetitive* improper comments, the grant of a mistrial would have been the only appropriate remedy available. Upon the repeated improper vouching for the truthfulness of the witnesses, followed by the emphatic assertion of the prosecutor's personal belief in the defendant's guilt, a cautionary instruction simply could not cure the harm and the undue influence

over the jury that resulted from such comments. Under the circumstances presented here, mistrial was not an extreme measure but was an absolute necessity to ensure the defendant received the fundamental fairness inherent in his right to due process. Applicant clearly met his burden of establishing deficient performance in counsel's failure to object to the first, second, and third remarks and in failing to move for a mistrial as the result of the prejudice resulting from all four remarks.

On the issue of prejudice, the state makes a single-sentence argument, claiming the trial court's preliminary instructions and jury charge so clearly instructed the jury it was the sole judge of credibility that Applicant suffered no prejudice. *See* Return, p. 17. To the contrary, the court's instructions to the jury concerning its role in judging credibility do not negate the prejudice that resulted from the repeated improper comments by the prosecuting attorney – a representative of the government in a position of trust. This Court recognizes that statements from such an official acquire added significance. *See Fortune v. State*, 428 S.C. 545, 552-54, 837 S.E.2d 37, 41-42 (2019). In this case, generic court instructions about the role of the jury do not eliminate the substantial prejudice resulting from repeated improper comments as to the personal belief of the representative of the government in the truthfulness of the witnesses and the emphatic statement of that governmental official of his own belief in the defendant's guilt. The prejudice prong is established.

If this Court grants the State's petition for a writ of certiorari, it should also grant Applicant's petition and find that counsel's handling of the assistant solicitor's improper argument was prejudicial deficient performance, warranting a new trial.

II. THE CIRCUIT COURT ERRED IN DENYING POST-CONVICTION RELIEF BASED ON TRIAL COUNSEL’S FAILURE TO MAKE A RECORD OF THE OBJECTIONS, ARGUMENT, AND RULINGS THAT OCCURRED DURING BENCH CONFERENCES.

Applicant challenges the trial court’s failure to grant post-conviction relief on the basis of trial counsel’s failure throughout the trial to create a record of the objections, arguments, and rulings made during off-the-record bench conferences. The State contends Applicant failed to meet his burden to establish prejudice because there is insufficient evidence to show what objections were made but not preserved on the record. But such a lack of evidence is exactly the situation that warrants application of the presumed prejudice contemplated by *United States v. Cronin*, 466 U.S. 648, 656-57 (1984). In this case, counsel failed to act in the role of advocate required by the Sixth Amendment by failing to preserve the potential claims of error that could have resulted in appellate review and reversal. The repeated – and admitted – failure by trial counsel to create a record of the objections, arguments, and rulings was a level of “ineffectiveness so pervasive as to render a particularized prejudice inquiry unnecessary.” *See Nance v. Ozmint*, 367 S.C. 547, 558, 626 S.E.2d 878, 883 (2006); *Frett v. State*, 298 S.C. 54, 56-67, 378 S.E.2d 249, 250-51 (1998).

If the Court grants the State’s petition for a writ of certiorari, it should also grant a writ of certiorari on this issue raised by the Respondent-Petitioner.

III. THE CIRCUIT COURT ERRED IN DENYING POST-CONVICTION RELIEF BASED ON TRIAL COUNSEL’S FAILURE TO OBJECT TO EVIDENCE OF OTHER ALLEGED BAD ACTS OF APPLICANT.

Applicant challenges the failure of counsel to object to the introduction of evidence of other alleged bad acts by the defendant toward the minor, M.C. Applicant

contends counsel's failure to object to these aspects of M.C.'s testimony was both deficient performance and prejudicial.

Applicant's petition sets out why the evidence of the unrelated alleged events was inadmissible under Rules 401, 403, and 404 of the South Carolina Rules of Evidence and the case law applying those rules. *See* Petition, pp. 16-19. The State contends, as it did in the court below, that the extraneous acts evidence was admissible to prove motive, intent, common scheme or plan, and an alleged pattern of grooming.<sup>2</sup> Those contentions are addressed and refuted in Applicant's petition, and the petition's arguments are incorporated into this reply and not repeated here. *See* Petition, pp. 16-19. Rather, this reply addresses certain new assertions now made by the State.

In its recital of the testimony elicited during the PCR hearing, the State's return notes counsel testified counsel and Applicant talked about the bad acts evidence<sup>3</sup> and counsel had no recollection of Applicant suggesting the kinds of challenges brought up during the PCR hearing. *See* Return, p. 11. Counsel's testimony does not undermine Applicant's contention that counsel rendered deficient performance in failing to object to the evidence of alleged other bad acts. In a criminal case, it is not incumbent upon the

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<sup>2</sup> In the PCR court, the State also contended, and the PCR court found, that the extraneous acts evidence was admissible under the exception of Rule 404(b), SCRE, for absence of mistake or accident. This claim is also addressed and refuted in Applicant's petition. *See* Petition, p. 17. Although the State recites the finding by the PCR court that the indicted offense was not a mistake, *see* Return, p. 19, the State has apparently abandoned reliance on this aspect of Rule 404(b), because the State's return does not include any argument that the evidence would have been admissible under the exception for absence of mistake or accident. As set out in the petition, the court's conclusion that the evidence was admissible under this exception was erroneous. *See* Petition, p. 17.

<sup>3</sup> The State further recites aspects of counsel's testimony concerning the discussions between counsel and Applicant. *See* Return, p. 12. Counsel's testimony as to those discussions was contradicted by the testimony of Applicant and his relationship partner, who was present for most of their discussions.

client – a layperson, not trained as an attorney – to know and understand the legal principles and evidentiary rules related to admission of such testimony. That responsibility uniquely rests with the lawyer.<sup>4</sup> That a client may not have suggested what objections to make and what legal principles to argue does not undermine a claim at the PCR stage that his attorney’s failure to make the objections and present the legal arguments fell below the standard of objectively reasonable representation.

The State continues to assert that the failure by trial counsel to object to the introduction of this evidence was part of counsel’s defense strategy. The first aspect of the State’s argument is that counsel testified his strategy was to use this evidence to the defense’s advantage, particularly in an effort to undermine the minor’s credibility. The State contends this was a reasonable trial strategy. Applicant submits that the decision to use this otherwise inadmissible and highly prejudicial evidence in such manner cannot be deemed reasonable, under the *Strickland* objective reasonableness standard. *Cf. Vail v. State*, 402 S.C. 77, 88-90, 738 S.E.2d 503, 508-10 (Ct.App. 2013). The State further speculates as to the strategy’s effectiveness, noting the jury asked that M.C.’s testimony be replayed. The State suggests the jury made this request “rather than simply accepting [M.C.]’s testimony as credible.” *See* Return, p. 20. The State’s suggestion is not supported by the evidence. It is equally likely the jury’s request was made for some other reason, such as a juror’s having not clearly heard the witness’s testimony. The jury’s request to replay testimony does not validate the State’s assertion that counsel’s strategy was effective or that it was reasonable.

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<sup>4</sup> In the PCR hearing, trial counsel agreed with the premise that the people lawyers represent do not know anything about how to approach the case. App. p. 636, lines 4-8.

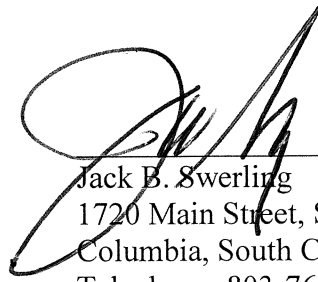
The second prong of the State's argument as to defense strategy is also flawed. The State suggests a strategy that counsel did not testified to, arguing counsel "likely minimized [the evidence's] impact" by having it come in during the case-in-chief rather than immediately prior to the jury's deliberations. But nowhere in his testimony did trial counsel state that this was his strategy. A strategic justification for deficient performance is not appropriate if it is not a strategy actually identified and pursued by trial counsel. *See Smith v. State*, 386 S.C. 562, 568, 689 S.E.2d 629, 633 (2010) (presumption of adequate representation based on valid trial strategy disappears when trial counsel acknowledges there was no trial strategy in mind when claimed act of deficient performance occurred).

For all these reasons, and for the reasons outlined in Applicant's petition, counsel's failure to object to the introduction of the evidence of other alleged bad acts was both deficient performance and prejudicial. If this Court grant's the State's petition for writ of certiorari, it should also grant Applicant's petition on this issue, find counsel rendered ineffective assistance, and grant Applicant a new trial.

#### CONCLUSION

If the Court grants the State's petition for a writ of certiorari, Respondent-Petitioner Styla also asks the Court to grant his petition for a writ of certiorari, review the issues set forth above, and grant him a new trial on the basis of counsel's prejudicial deficient performance.

Respectfully submitted,



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