

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. SUPREME COURT

Honorable Kristi F. Curtis, Circuit Court Judge

CARLOS A. RUIZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001776

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective in failing to properly object, as irrelevant and bolstering, to testimony from a DSS worker that indicated she believed Minor's accusations, but Minor's mother did not believe Minor, finding the testimony was part of a valid strategy to question Minor's credibility?

STATEMENT

In January of 2017, the Charleston County Grand Jury indicted Petitioner, Carlos A. Ruiz, for three counts of criminal sexual conduct with a minor first degree and three counts of criminal sexual conduct with a minor second degree, indictments #2017-GS-10-00875- 00880.¹ (App. 617-628). The true bill stamp on the indictment is dated January 10, 2017. (App. 617-628). The trial, however, started on January 9, 2017. (App. pp. 1-172). It appears that jury selection, opening statements and the direct examination of Minor complaining witness all took place before the indictments were true billed by the grand jury. There was no objection to this irregular procedure.

The jury trial proceeded before the Honorable Roger M. Young. Mary Ford and Nicholas Smit represented Petitioner. Deborah Herring-Lash and Nina Savas prosecuted the case. The jury returned verdicts of guilty as indicted. Judge Young sentenced Petitioner to three concurrent life sentences for the first-degree charges and three concurrent twenty (20) year sentences for the second-degree charges. A timely notice of intent to appeal was filed and the direct appeal perfected. Chief Appellate Defender Robert M. Dudek represented Petitioner on appeal. Assistant Attorney Jonathan Scott Matthews represented the State. The issue raised on appeal was whether the court erred by allowing the testimony of DSS worker Letrice Smalls that the agency determined that the child's mother was a "non-supportive" mother, and erroneously "non-believing" of her accusing daughter's allegations where appellant continued to live in the household since this testimony was irrelevant, and it improperly bolstered the state's contention that the minor was telling the truth, and that appellant was guilty. (App. p. 640). The Court of

¹ It is unclear who testified before the grand jury as the witness is listed as the North Charleston Police Department, in violation of S.C. Code §14-7-1550.

Appeals found the issue unpreserved. State v. Ruiz, 2019-UP-044 (S.C. Ct. App. filed January 30, 2019). (App. p. 674).

On January 23, 2020, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 676-682). The State filed a return on August 14, 2020. (App. pp. 683-691). An evidentiary hearing was held on June 30, 2023, before the Honorable Kristi F. Curtis. Christopher L. Murphy represented Petitioner. Danielle Dixon represented the State. In a written order filed September 26, 2024, Judge Curtis denied relief and dismissed the application. (App. pp. 735-745). A timely notice of intent to appeal was filed on October 21, 2014. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective in failing to properly object, as irrelevant and bolstering, to testimony from a DSS worker that indicated she believed Minor's accusations, but Minor's mother did not believe Minor, finding the testimony was part of a valid strategy to question Minor's credibility.

At the time of the PCR hearing on June 30, 2023, Petitioner was sixty-eight years old. (App. p. 658, lines 7-8). At sentencing the prosecutor told the judge that Petitioner had no prior convictions. (App. p. 608, lines 20 – 24). Petitioner is from Nicaragua and speaks very little English. (App. p. 609, line 21; p. 658, lines 9-10). Interpreters were used at both the trial and the PCR hearing. The minor who made the allegations against Petitioner is the stepdaughter. At the time of trial Minor was in the eighth grade and living in a foster home. (App. p. 119, line 15 – p. 120, lines 1-21).

The first time Minor alleged sexual abuse to her mother was in the middle of a heated argument after Petitioner accused Minor of inappropriate behavior with a boy, MM, who she was seen with coming out of the woods. (App. pp. 162- 165). During the argument Minor testified, "I ended up yelling at her and saying, "You should be worried about him. He's raping me." (App. p. 165, lines 21-22). Minor testified that she repeated the allegations to MM and a few friends. (App. p. 166, line 23 – p. 167, lines 1-10). At trial Minor testified, "It was MM and one time I was walking outside of school, and, like, just a few of my friends, we were walking, and we were, like saying our secrets. We were like – we were just yelling our secrets, and I didn't say the exact thing, but I was saying – I just, like, had a guess. One of the – so as a group, only two of them actually, I guess, figured out what I was saying." (App. p. 167, lines 1-7). Minor testified that the two who "figured out" what she was saying were sisters. (App. p. 167, lines 8-10).

Minor testified that the sisters “tricked” her into going to their house after school. (App. p. 167, lines 8-24). The sisters had apparently told their parents about the allegations made by Minor. (App. p. 167, lines 16-23). This happened the day before Minor disclosed the allegations to the school resource officer. As a result of going to the sisters’ house after school, Minor was late getting home. Minor’s mother, Nancy Lorenzo, became concerned when Minor did not come home from school and went to the school to look for Minor. (App. p. 399, line 11 – p. 400-401). Mother met Officer Tiffany Crider, the school resource officer, and as they were looking for Minor, she walked up. (App. p. 400, line 9 – p. 401, lines 1-14). They questioned Minor about where she had been and the officer testified, “At that point, Minor became very defensive, began using language and acting in a way that I had never seen her act from having past dealings with her.” (App. p. 401, lines 15-17).

The next morning Officer Crider asked to speak with Minor about her behavior the day before. (App. p. 402, line 5 – p. 403, lines 1-25). Officer Crider testified she discussed with Minor why her mother was worried when she was late coming home from school and the possibility of her being sexually assaulted. (App. p. 402, line 21 – p. 403, lines 1-20). The officer testified that when she mentioned sexual assault Minor’s demeanor changed, and she eventually disclosed allegations of sexual abuse. (App. p. 403, line 20 – p. 404, 405).

Prior to the State calling witness Letrice Smalls, a foster care worker with the Charleston County Department of Social Services, Appellant objected saying, “I would object to the testimony as essentially vouching or bolstering, but --” (App. p. 349, lines 17-18). The trial judge asked if defense counsel had an objection to the qualification of the witness but failed to rule on the objection to the testimony as vouching or bolstering. (App. p. 349, lines 19 – p. 350,

lines 1-5). Smalls testified that she was the foster care worker for Minor and her family. (App. p. 351, lines 11-24).

The following took place during direct examination of Smalls:

Q. How long -- I think you've already said it. You've been a foster care worker how long?

A. Nine years.

Q. And have you worked with lots of families where the supportive parent of -- the non-abusive parent is non-supportive and non-believing?

MS. FORD: Objection. I'm not quite sure where she's going.

MS. HERRING-LASH: That's it about.

MS. FORD: Well, relevance to this case, Your Honor.

THE COURT: Is she offering some sort of opinion? What is she testifying about?

MS. HERRING-LASH: That it's not unusual at this point the children remain in foster care.

THE WITNESS: They remain in foster care?
Yes, ma'am.

BY MS. HERRING-LASH:

Q. What would have to happen for the Department of Social Services to return them --

A. There would have to be a change of circumstances. Currently Mr. Ruiz resides in the home with Ms. Lorenzo, and the other issue is that Ms. Lorenzo doesn't believe [Minor], and because of this, the agency would feel that she's unable to protect.

(App. p 353, line 12 – p. 354, lines 1-11). The judge did not rule on trial counsel's objection that the testimony was not relevant. The testimony was improper as both bolstering and irrelevant. The implication from the testimony is that Smalls, the foster care worker for Charleston DSS, an agency tasked with the role of protecting children, believed Minor even

though mother did not. The admission of Smalls' testimony was challenged on direct appeal and the Court of Appeals found the issue was not preserved. State v. Ruiz, 2019-UP-044 (S.C. Ct. App. filed January 30, 2019). (App. p. 674).

In the PCR application Petitioner generally alleged that, "Counsel failed to make legal objections to testimony and charges." (App. p. 678). At the start of the PCR hearing Petitioner alleged ineffective assistance of trial counsel for, among other allegations, failing to object to the DSS worker's testimony as bolstering. (App. p. 695, line 6 – p. 696, lines 1-6). PCR counsel erroneously stated that the Court of Appeals found the error harmless. (App. p. 696, line 7).

During the PCR hearing the State asked trial counsel about her trial strategy. (App. p. 728, lines 19-20). Trial counsel explained that the trial strategy was to show Minor was lying about the allegations, that Minor and her siblings hated Petitioner, and Minor had a motive to lie because she wanted him out of her life. (App. p. 728, line 21 – p. 729, lines 1-14). The State then specifically asked trial counsel, "And with that strategy, did you have any strategy in terms of the mother and what was going on in her life with DSS, I guess is what I'm specifically asking?" (App. p. 729, lines 15-17). Trial counsel answered:

So the mom believed him. And it was interesting because the mom actually outright told DSS and me, like, she wasn't even necessarily in love with her husband; she felt a responsibility. So it wasn't a case where she just loved him so much. She just genuinely didn't believe her daughter.

So it was my strategy – and I think it was clear from the trial that, you know, she knows her daughter best. So my strategy was to share that if her own mother doesn't believe her even though she doesn't even – she's not in love this man – you know, she feels a responsibility but she's not in love, why – you know, why should the jury believe her?

(App. p. 729, line 18 – p. 730, lines 1-4). Trial counsel did not testify that she purposefully chose not object to the testimony of the DSS worker as part of her trial strategy. Trial counsel

first objected to the testimony as vouching or bolstering. (App. p. 349, lines 17-18). Trial counsel then objected to the testimony as irrelevant. (App. p. 353, lines 18-22).

At the end of the PCR hearing the State asserted to the judge, “I do want to note the part about the DSS – the part that he raised, which is 354 of the transcript and 243 of the record on appeal. And I would submit to your Honor that that was not objected to because it was part of her trial strategy of bringing out the fact that the mother did not believe that the victim was telling the truth.” (App. p. 732, lines 17-22). While trial counsel’s strategy involved showing that the mother did not believe Minor, the DSS worker’s testimony involved a separate issue. The DSS worker’s testimony was improper because she implied that she believed Minor even though mother did not.

In the order of dismissal the PCR judge wrote:

This Court finds Applicant did not prove counsel was ineffective in this regard. Initially, Applicant did not clarify or set forth at the PCR hearing *what* legal objection he believed should have been made to this testimony and thus did not meet his burden of proving deficiency or prejudice. To the extent Applicant asserts counsel should have objected based on relevance (an argument raised on direct appeal), this Court finds counsel *did* object to the testimony based on relevance, and counsel’s failure to object again on the same basis was reasonable under prevailing professional norms and not deficient. Further, this Court finds it is not reasonably probable a further objection on relevance would have excluded the testimony or changed the outcome of trial.

To the extent Applicant believes counsel should have objected based on improper bolstering (also argued in his direct appeal), this Court finds Applicant did not prove counsel was ineffective in this regard. Critically, counsel’s trial strategy was to undermine the minor victim’s credibility in part by highlighting the fact the minor victim’s mother, Nancy Lorenzo, did not believe the sexual abuse occurred. This is evidenced by counsel’s cross-examination of Smalls, where she elicited testimony that the primary reason Lorenzo did not have custody of her children was that she did not believe the sexual abuse occurred. (R. 244-48; Tr. 354-58). This is further evidenced by trial counsel’s direct examination of Lorenzo, where she elicited testimony that Lorenzo did not believe her daughter’s accusations against Applicant. (R. 323-24, 346, 349, 351-57, 367-69; Tr. 440-41, 463, 466, 468-74, 484-86).

(App. pp. 739-740). The order of dismissal then references trial counsel's closing argument as evidence of her trial strategy to undermine the credibility of Minor by highlighting the fact that her mother did not believe her. (App. p. 740).

Finally, the PCR judge wrote in the order of dismissal:

This Court finds counsel's strategy here – to highlight the fact the minor victim's mother did not believe her as a way of impeaching the minor victim's testimony – was reasonable under prevailing professional norms and not deficient. Likewise, because Smalls' foregoing testimony that Lorenzo did not believe the minor supported this strategy, counsel was not deficient for not objecting. Finally, because this testimony supported a valid trial strategy and was ultimately cumulative to other testimony elicited as part of this valid strategy, it is not reasonable likely an objection would have changed the outcome. This claim is denied.

(App. p. 740). The PCR judge erred.

First, as to the relevance objection, the order correctly notes this issue was raised on direct appeal. The Court of Appeals found the issue was not preserved. Trial counsel was deficient in failing to obtain a ruling from the trial judge on the relevance objection. Second, as to the bolstering objection, the order also correctly notes this issue was also raised on direct appeal. The Court of Appeals found this issue was not preserved. Trial counsel was deficient in failing to obtain a ruling from the trial judge and renew the objection as to bolstering. The failure to obtain a ruling and renew the objection as to bolstering was not part of trial counsel's strategy to highlight the fact that Minor's mother did not believe her. Challenging Minor's credibility because the mother did not believe her is a valid trial strategy. The separate issue of failing to adequately object to improper irrelevant and bolstering testimony of the DSS worker is not part of that valid trial strategy. Importantly, trial counsel attempted to object to the DSS worker's testimony as both bolstering and irrelevant. Trial counsel did not need the DSS worker's testimony to establish that Minor's mother did not believe her because the mother

testified at trial that she did not believe Minor. It is unclear what relevance the DSS worker's testimony had with regard to the criminal case other than to imply that the DSS worker believed the testimony of Minor and because the mother did not believe Minor, she could not have custody of her children. Petitioner was prejudiced by trial counsel's failure to adequately object to the DSS worker's testimony. The credibility of Minor was a critical factor for the jury. There is a reasonable probability that if counsel had properly objected to the irrelevant and improper bolstering testimony of the DSS worker, the result of the proceeding would have been different.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

Trial counsel was deficient in failing to adequately object to the testimony of the DSS worker. The testimony was irrelevant and improperly bolstered the testimony of Minor. “The

assessment of witness credibility is within the exclusive province of the jury.” State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). In Chappell v. State, 429 S.C. 68, 75, 837 S.E.2d 496, 499–500 (Ct. App. 2019), the South Carolina Court of Appeals wrote:


Moreover, a witness “may not ... give testimony that improperly bolsters the credibility of the victim.” Briggs v. State, 421 S.C. 316, 323, 806 S.E.2d 713, 717 (2017). Improper bolstering is “testimony that indicates the witness believes the victim, but does not serve some other valid purpose.” Id. at 325, 806 S.E.2d at 718. Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that the witness believes the victim, or when there is no other way to interpret the testimony other than to mean the witness believes the victim is telling the truth. Id. at 324, 806 S.E.2d at 717; State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); McKerley, 397 S.C. at 465, 725 S.E.2d at 142.”

When asked by the State what would have to happen for DSS to return the children, the DSS worker testified, “There would have to be a change of circumstances. Currently Mr. Ruiz resides in the home with Ms. Lorenzo, and the other issue is that Ms. Lorenzo doesn't believe [Minor], and because of this, the agency would feel that she's unable to protect.” The testimony from the DSS worker indicates that the DSS worker believes Minor. The testimony does not serve some other valid purpose. The purpose of the DSS worker’s testimony was to inform the jury that the DSS worker and her agency believed Minor. There is no other way to interpret the testimony other than to mean the witness believes Minor is telling the truth.

Petitioner was prejudiced by trial counsel’s deficient performance. As in Chappell, the outcome of the trial hinged on the jury assessment of Minor’s credibility. There is a reasonable probability that if counsel had properly objected to the irrelevant and improper bolstering testimony of the DSS worker, the result of the proceeding would have been different.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of May, 2025.