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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to Greenville County

The Honorable D. Garrison Hill, Trial Court Judge
The Honorable Alex Kinlaw, Jr., PCR Judge

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STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JERALD D. GASKINS, JR.,

RESPONDENT.

Appellate Case No. 2025-001072

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# PETITION FOR WRIT OF CERTIORARI

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## PETITIONER'S ISSUES PRESENTED

I.

Did the Court of Appeals err in finding that trial counsel was deficient for failing to object to the "Jay Fowler" line of questioning and further err by addressing the prejudice prong solely on speculation and without consideration of the record as a whole?

II.

Did the Court of Appeals err by rendering an isolated prejudice analysis of the State's line of questioning regarding the no contact order by overlooking the evidence that supported the verdict, including testimony that hindered Respondent's credibility prior to any reference of the no contact order?

## STATEMENT OF THE CASE

In April of 2013, the Greenville County Grand Jury indicted Respondent for four counts of criminal sexual conduct with a minor, 2nd degree (2013-GS-23-3231; -3232; -3234; -3235) and two counts of lewd act upon a child (2013-GS-23-3233; -3236). (App. 518-519; 521-522; 524-525; 527-531; 533-535; 537-538). On February 4, 2015, Respondent's case proceeded to trial before a jury with the Honorable D. Garrison Hill presiding. (App. 1). Respondent was represented by Randall L. Chambers, Esq., and Assistant Solicitor Kristie B. Hodge of the Thirteenth Circuit Solicitor's Office prosecuted the case. (App. 1).

At the conclusion of trial, the jury returned a guilty verdict as indicted on all charges. (App. 510-512). Judge Hill sentenced Respondent to concurrent twenty (20) year terms of imprisonment for each of the criminal sexual conduct with a minor, 2nd degree convictions, and a concurrent fifteen (15) year term of imprisonment for one of the lewd act convictions, and a consecutive five (5) year term of imprisonment for the remaining lewd act conviction. (App. 516-517; 520; 523; 526; 532; 536; 539).

Respondent filed a timely notice of appeal, and appellate counsel J. Falkner Wilkes, Esq. perfected the appeal. (App. 540; 583-616). The South Carolina Court of Appeals affirmed Respondent's convictions in a per curiam unpublished opinion pursuant to Rule 220(b), SCACR and supporting authorities. *State v. Gaskins*, Unpublished Op. No. 2017-UP-166 (S.C. Ct. App. filed April 19, 2017). (App. 617-619). The Remittitur was issued on May 5, 2017. (App. 620).

Respondent filed an application for post-conviction relief on September 14, 2017, amended on May 22, 2018, alleging that he is being held in custody unlawfully based on claims of prosecutorial misconduct, due process violations, and ineffective assistance of counsel. (App. 621-627, 634-643). On October 24, 2018, an evidentiary hearing was convened at the Greenville

County Courthouse with the Honorable Alex Kinlaw, Jr., presiding. (App. 644). Respondent was present and represented by C. Rauch Wise, Esq. (App. 644). The State was represented by DeShawn H. Mitchell of the South Carolina Attorney General's Office. (App. 644). Judge Kinlaw issued an Order denying and dismissing the application with prejudice on February 1, 2019, filed with the Greenville County Clerk of Court on February 4, 2019. (App. 754-780). On February 19, 2019, Respondent, through counsel, submitted a Rule 59(e) Motion to Alter or Amend Judgment. (App. 781-788). The State submitted the Return to the motion on March 1, 2010. (App. 789-792). On March 4, 2019, Judge Kinlaw issued an Order denying Respondent's motion to alter or amend judgement.[1] (App. 793-795).

On June 3, 2019, Respondent filed a notice of appeal in this Court challenging the denial of his post-conviction relief application. (App. 796). C. Rauch Wise, Esq., filed the Petition for Writ of Certiorari and the Appendix on September 3, 2019, raising the following claims of error:

I. Did the Post Conviction Relief Court err in failing to find trial counsel was ineffective when trial counsel failed to object to the improper cross-examination of Jerald Gaskins when the prosecutor was permitted to ask Mr. Gaskins improper questions on cross- examination?

II. Did the Post Conviction Relief Judge err in failing to find that trial counsel was ineffective when he failed on several occasions to object to improper hearsay testimony as to statements made by the complaining witness was were improper under Rule 80l(d)(l)(D) of the South Carolina Rules of Evidence?

III. Did the Post Conviction Relief Judge err in failing to find that trial counsel was ineffective when he failed on several occasions to object to improper hearsay testimony as to statements made by the complaining witness was were improper under Rule 801(d)(l)(D) of the South Carolina Rules of Evidence?

IV. Did the Post Conviction Relief judge err in failing to hold trial counsel to be ineffective when trial counsel failed to object to the improper vouching

[1] Respondent's Motion to Alter or Amend Judgment was filed with the Clerk of Court on March 8, 2019; the State's Return was filed on March 11, 2019; and the Order denying the motion was filed on March 5, 2019.

for the credibility of the complaining witness?

V. Did the Post Conviction Relief Judge err in failing to find appellate counsel was ineffective when appellate counsel admitted he knew that the South Carolina Supreme Court had granted a petition for writ of certiorari in *State v. Perez* to overturn *State v. Wallace*, but failed to disclose this fact to Jerald Gaskins prior to advising Mr. Gaskins to not file a petition for writ of certiorari to the South Carolina Supreme Court?

The State filed the Return to the Petition on January 2, 2020, and Respondent filed its Reply on January 16, 2020. By Order dated January 16, 2020, this Court transferred the appeal to the South Carolina Court of Appeals pursuant to Rule 243(1), SCACR. On March 16, 2022, the Court of Appeals denied certiorari as to Questions 2 and 5, granted Question 1 with the exception of Respondent's allegations concerning trial counsel's handling of the cross-examination about Respondent's drug activity, and granted as to Questions 3 and 4. It was further ordered that the parties proceed with briefing in accordance with Rule 243(j), SCACR.

On April 21, 2022, Respondent filed the Brief of Petitioner addressing the following issues as instructed by the Court of Appeals:

I. Did the Post Conviction Relief Court err in failing to find trial counsel was ineffective when trial counsel failed to object to the improper cross-examination of Jerald Gaskins when the prosecutor was permitted to ask Mr. Gaskins improper questions on cross-examination?

II. Did the Post Conviction Relief Judge err in failing to find that trial counsel was ineffective when he failed to object to the expert testimony of Officer Robert Perry as to delayed disclosure when the officer had not been qualified as an expert?

III. Did the Post Conviction Relief judge err in failing to hold trial counsel to be ineffective when trial counsel failed to object to the improper vouching for the credibility of the complaining witness?

Respondent supplemented the Appendix on July 28, 2022, and August 19, 2022. On August 22, 2022, the State filed the Brief of Respondent. Respondent submitted the Reply to the State's Brief on September 12, 2022, and the State submitted an Amended Brief on October 27, 2022.

Oral argument was held on the matter on February 13, 2024. Mr. Wise argued on behalf of Respondent and Senior Assistant Deputy Attorney General, Melody J. Brown, of the South Carolina Attorney General's Office argued on behalf of the State. The South Carolina Court of Appeals issued an unpublished opinion affirming in part, reversing in part and remanding for a new trial. *Gaskins v. State*, Unpublished Op. No. 2025-UP-046 (S.C. Ct. App. filed February 5, 2025).

On February 5, 2023, Respondent filed a Motion for Bail. The State made its Return against the motion on February 18, 2025, and Respondent filed a reply on February 21, 2025. On February 20, 2025, the State filed a Petition for Rehearing, which was denied on May 2, 2025. The Court of Appeals also denied Respondent's motion for bail that same day.

The State respectfully now submits the Petition for Writ of Certiorari in this Court.

## PETITIONER'S STATEMENT OF FACTS

In the spring of 2011, Respondent and his wife Rachel lived in Traveler's Rest where they met and began regularly socializing with the victim's family, the Mucienko's. (App. 62-63; 82-83; 134-135; 394-395). The family included the victim's mother and father, Sandra and Walt Mucienko, the victim's older sister, Jamie Mucienko, and the victim who was thirteen (13) years old when she met Respondent. (App. 66; 135; 186).

Over the next few months, Respondent developed a close friendship with the family, often assisting them with paying their bills, and having the victim over to his home to babysit his and Rachel's young child. (App. 65; 71-72; 272-273; 288; 323; 394-396; 415). Later on, the victim's mother discovered a phone Respondent had secretly given to the victim so that they could maintain communication after the victim's parents confiscated her original phone for receiving a bad grade. (App. 73-74; 115; 213-214; 227; 415). The victim's mother became uneasy of Respondent and the victim's close relationship and ended their contact as a result. (App. 74-75).

In November of 2012, Rachel's mother (Respondent's mother-in-law) contacted the victim's mother and provided her with information in regard to Respondent and the victim. (App. 75; 87-88; 156-157). Around this time, Respondent and Rachel were in the middle of divorce proceedings. (App. 87-88). In response to this information, the victim's mother and father asked the victim about her and Respondent's relationship, and the victim initially denied anything inappropriate occurred between her and Respondent. (App. 75-76; 228-229). However, as the conversation with her parents continued, the victim began to cry before revealing she had been sexually abused by Applicant. (App. 76-77; 228-229). The victim's mother immediately reported the sexual abuse to the authorities, and Deputy Paul Floyd of the Greenville County Sheriff's Office responded to the Mucienko home. (App. 53-54; 76-77, 89). Deputy Floyd spoke with the

victim alone and the victim disclosed she had been sexually abused by Respondent on multiple occasions over the course of more than a year. (App. 56-58).

*Victim's Testimony at Trial*

At trial, the victim testified to multiple occasions of sexual abuse and the substance of the conversations that took place over the course of the abuse.[2] The victim testified that she met Respondent when she was thirteen (13) years old at a community horseshoe tournament where Respondent gave her his phone number. (App. 185-187). Shortly after, she testified that she began visiting Respondent and Rachel's home, occasionally spending the night. (App. 187-189).

During one of the visits, Respondent asked the victim if she was a virgin before telling her that he didn't want anyone else to take her virginity and that, "If it was me, I'd make love to you and spoil you for the rest of your life." (App. 189-190). A few weeks later, when she was at Respondent and Rachel's home, the victim testified that Respondent again brought up that he would "make love and spoil [her]." (App. 192). She testified that Respondent then went to find out how long Rachel was going to be in the bath, confirmed it would be 30-45 minutes, and then initiated sexual intercourse with her. (App. 192-193). Specifically, during that incident, the victim testified Respondent removed his pants, began fondling and kissing her, and then quickly had sexual intercourse with her. (App. 193-194). Afterwards, the victim testified the two went back to playing games or sitting in the living room watching TV. (App. 194). From that point on, Respondent provided her with material small things that she requested. She testified that, "like I could ask for a candy bar, a drink, and it would just simply just be put in my hand in an instant." (App. 195). Respondent gave her "a lot of attention," and promised to give her whatever she wanted. (App. 195; 213).

[2] At the time of trial, the victim was 17 years old. (App. 183).

As the abuse continued, the victim testified she and Respondent engaged in sexual intercourse "over 10 times" at different homes Respondent moved to over the course of the next year and a half. (App. 197-199). She recalled an incident while Respondent and Rachel were living at Magnolia Trailer Park, where Respondent repeatedly begged her to have intercourse with him while Rachel was at her grandmother's home with their child. (App. 198-199). She testified that she kept telling Respondent that she didn't want to have intercourse, but he kept begging her, and she eventually became overwhelmed from his persistence and agreed to have intercourse. (App. 199). She explained a similar incident from their initial encounter, where they both were unclothed from the waist down and he inserted his penis; the entirety of the interaction lasting "maybe 10 minutes." (App. 199). She also noted that Respondent used a condom. (App. 199).

The victim further testified that while Respondent was living in Magnolia Trailer Park, that there were other instances of sexual abuse such as oral sex, specifically Respondent putting his mouth on her vagina. (App. 200). She recounted that Rachel was again visiting her grandmother to pick up her and Respondent's child during the incident. (App. 200). She also recounted an incident where Respondent took her with him to pick up food from Waffle House for other people in the home, and while they were waiting for the food, drove her to an abandoned house behind a gas station where they had intercourse in the back seat of his car. (App. 201-202; 216-217). She indicated that sexual intercourse in the back seat of the car happened an additional time. (App. 216).

Respondent and Rachel then moved to "Central," and the victim testified to two incidents that occurred there. (App. 205). She recounted that Rachel was sick, and Respondent and herself took Rachel to the hospital and dropped her off. (App. 205). She testified that Respondent told Rachel to call him when she found out something. (App. 205). Respondent and the victim then

went back to the Respondent's residence where they had intercourse. (App. 205). The victim testified that they were completely unclothed, and that Respondent used "KY," a brand of lubricant, on her. (App. 205). She testified that she had to clean herself because the lubricant burned, they then both got dressed, and subsequently Respondent received a call from Rachel. (App. 205-206). Upon picking Rachel up from the hospital, Rachel told them that she was pregnant. (App. 206).

After receiving that news, the victim testified that she told herself that she wasn't going to engage with Respondent anymore because she felt that it was wrong and she had started to become fond of Rachel and their child. (App. 206). She testified that she would go over to Respondent and Rachel's home for a sense of freedom, but Respondent would persistently ask her to have intercourse, taking advantage of when Rachel was asleep. (App. 207-208). In one instance, the victim testified she had fallen asleep on the couch and woke up to Respondent laying next to her with his legs thrown over her. (App. 208). She then heard an argument between Respondent and Rachel after Rachel saw them asleep together on the couch. (App. 209-210).

The victim recalled an additional incident where Respondent told the victim and her parents that he was taking the victim to a country music concert, but the tickets were sold out so the victim's parents nor her sister would be able to attend with them. (App. 223-226). Instead of taking her to the concert, Respondent took her to "Belvue," where the victim testified that they had intercourse and "he started doing oral again, fondling, oral, same thing, everything." (App. 224-225). The victim noted that incident was her last sexual interaction with Respondent, but the relationship continued until her mother found the phone Respondent had secretly given her, and she eventually revealed the sexual abuse when confronted by her parents. (App. 227-229).

*Friend's Testimony at Trial*

The State presented the victim's friend, hereinafter "friend," who testified to enduring a similar pattern of abuse from Respondent. The friend testified that she was fourteen (14) years old when she met Respondent in the Spring of 2011 while visiting the Mucienko family home for a horseshoe tournament.[3] (App. 308). Upon initially meeting Respondent, the friend testified that he was immediately flirtatious with her, and the two exchanged phone numbers later that afternoon. (App. 310). She testified that Respondent would text her on Facebook asking her to "meet up and stuff," and had begun to give her special attention (App. 310-311).

The friend testified that when she went over to Respondent's home for a cookout, Respondent took her to a back room and they began talking and kissing, which lasted about 20 or 30 minutes. (App. 312). She testified that she had two more sexual encounters with Respondent. (App. 313). She recounted that Respondent had picked her up and took her to his house when no one was at his home, and they had intercourse on the bed. (App. 313). He then took her back home. (App. 314). She also recounted a sexual encounter where Respondent took her to an abandoned house and wanted to have intercourse in his car, but that she was not comfortable with the situation. (App. 314). She testified that Respondent "got his wife's clothes and laid them on the bottom of the floor inside the house. And I had tried to get on my knees, but there was broken glass in there. So it was about five minutes or six minutes of a sexual encounter." (App. 315).

She recounted that they had intercourse one more time a few weeks later in his house, and during that interaction she told Respondent that she was uncomfortable and did not want to do it anymore. (App. 316). She testified that Respondent told her that it was okay that she was uncomfortable because she was a child and could not process like an adult. (App. 316). She

[3] The friend was eighteen (18) years old at the time of trial. (App. 306).

testified that Respondent then told her that "he was going to go after [the victim] next." (App. 317).

*Rachel's (Respondent's Ex-Wife) Testimony at Trial*

At the outset of her testimony, Rachel indicated she met Respondent, who was twenty-six (26) years old at the time, in September of 2008 when she was a (17) year-old high school student. (App. 131). She testified that Respondent convinced her to move in with him within two weeks of meeting, and they got married less than a year later. (App. 132-134; 175-176). As to their marriage, Rachel testified that Respondent was abusive and manipulative toward her, and that he forced her to make a false allegation of sexual abuse against her father that she subsequently recanted. (App. 143-44; 165-166; 175; 178-179).

Rachel confirmed she and Respondent became friends with the Mucienko family after meeting them at a horseshoe tournament in March of 2011. (App. 134). She confirmed that the victim began regularly visiting their home, sometimes spent the night, and that Respondent would pick the victim up from volleyball practice and go to her school events. (App. 137-139). Rachel testified that she became uncomfortable about the relationship and confronted Respondent, who reacted angrily. (App. 138). Rachel further recalled instances where Respondent and the victim were alone together numerous times during her visits, and she recounted on one occasion she found them lying on a couch together in the middle of the night with Respondent's leg draped over the victim's legs. (App. 148). After finding them in that position, Rachel confronted Respondent and he became very threatening. (App. 149). Subsequently, Rachel testified that Respondent kicked her out of the home and eventually filed for divorce. (App. 152-154). Rachel eventually revealed her concerns about Respondent and the victim's relationship to the victim's mother and Investigator Perry. (App. 157-59).

*Applicant's Testimony at Trial*

Applicant denied any relationship or sexual involvement with the victim. (App. 421-422). He denied the details of the sexual encounters the victim described in her testimony, and testified that he regularly saw the Mucienko family and that the victim would babysit his and Rachel's child. (App. 395-396). After the victim began visiting, Applicant acknowledged she spent the night at his home on some occasions, but he claimed she was never alone with him and she simply played with his daughter, played video games, and talked to her friends on the internet. (App. 398-399). Respondent further testified that he tried to keep witnesses around him all the time to verify his innocence because he had been accused of many things during his lifetime. (App. 400-401; 440).

Respondent testified that he eventually stopped spending time with the Mucienko family due to their alleged violent tendencies, and he denied that the victim visited him at one of the homes he moved to in Travelers Rest. (App. 408-10). Subsequently, in October of 2012, Respondent testified that he cut off all ties with the Mucienko family after discovering the victim's father had secretly added multiple vehicles to his insurance policy. (App. 415-418). Respondent testified that he only saw the victim in passing after cutting off ties with her family. (App. 418). Respondent denied that the victim's friend had ever been to his home and further denied having any type of inappropriate relationship with her. (App. 419-422).

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if there is probative evidence in the record to support them. *Buckson v. State,* 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed de novo without deference to the lower court. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will only reverse the decision of the PCR court when it is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

### I.

**The Court of Appeals erred in finding that trial counsel was deficient for failing to object to the "Jay Fowler" line of questioning and further erred by addressing the prejudice prong solely on speculation and without consideration of the record as a whole.**

In sum, the Court of Appeals found that trial counsel was deficient for failing to object to the State's line of questioning inquiring if Respondent used the name "Jay Fowler" on his Facebook account to message minors. Specifically, the Court of Appeals found that trial counsel should have objected to the State's lack of foundation for the question or raised a Rule 403, SCRE and Rule 404(b), SCRE objection based on the implication of the questions.

At the PCR hearing, trial counsel indicated that he did not object to the "Jay Fowler" line of questioning because he made similar objections previously, and the trial court ultimately overruled his argument ruling that the State could ask the witnesses in regard to the challenged questions and the State would have to accept the answer. (App. 425-430; 724-725).

At trial, the victim's sister produced pictures she had taken on her iPad of messages between herself and Respondent discussing his affection for the victim. (App. 100-113). Trial counsel objected arguing that the messages are hearsay, that the State had not laid a foundation that the texts came from Respondent, and that they were not timely disclosed. (App. 101-102). The testimony was proffered, and the trial court subsequently overruled the objection and allowed the victim's sister to testify as to the messages. (App. 104-106).

Trial counsel then objected to a line of questioning regarding messages between Respondent and Walt Mucienko, arguing that no foundation had been laid. (App. 424-428). Trial counsel argued that the prosecution was questioning Respondent about the messages while they were in front of him, which was improper since it indicated that it was a statement that he made

though he was denying that he sent the text messages at all. (App. 429). The trial court ultimately overruled the objection ruling that the prosecution could ask Respondent if he made the statement. (App. 429-430).

*Strickland* requires "that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." 466 U.S. at 689, 104 S. Ct. at 2065. Rather than affording trial counsel a highly deferential performance review based on his perception that an objection would have been made in vain considering the trial court's prior rulings, the Court of Appeals overlooked the contributing factors relevant to trial counsel's decision, and analyzed his performance based on an isolated line of questioning.

Nonetheless, the ineffectiveness claim can be disposed of on the prejudice prong alone. *See Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065; *see also Rivers v. State*, Op. No. 28285 (S.C. Sup. Ct. filed May 28, 2025). "In making the prejudice determination, a court must 'consider the totality of the evidence before the jury.' " *Rivers*, citing *Jones v. State*, 332 S.C. 329, 333, 504 S.E.2d 822, 824 (1998). Here, the Court of Appeals' prejudice analysis offers a broad conclusion that trial counsel's failure to object "enabled the State to pursue the allegation that he had communicated with another minor female by using a social media alias," and that such "deficient performance prejudice[d] the applicant's case." *Gaskins*, at 9. Such a conclusion falls far short of what is required of the prejudice prong, i.e., that there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. *Strickland*, 466 U.S. at 695, 104 S.Ct. 2052.

Relative to the State's assertion that Respondent had a history of communicating and initiating relationships with minors, the State presented a friend of the victim's, who testified to

her own experience with Respondent when she was fourteen (14) years old. She described a similar experience to the victim's, where Respondent initiated communication, gave her special attention and ultimately convinced her to have intercourse with him. (App. 310-314). Notably, she testified that they communicated via Facebook messenger. (App. 310, 314). She recounted the sexual intercourse to be quick, only their pants were removed and noted that Respondent always wore a condom. (App. 314). As their relationship continued, the friend noted they had intercourse on a few more occasions, including on one occasion at an abandoned house. (App. 314-316). Eventually, the friend indicated she ended the relationship with Respondent and when she did so, he informed her he was going to "go after" the victim next. (App. 316-317). At trial, Respondent testified that he met the friend twice, he never hung out with her and denied sending her a Facebook message under his account or under "Jay Fowler." (App. 419, 454-455).

Additionally, the solicitor asked Respondent if he knew Jennifer Anglin, to which he responded that he knew of her. (App. 444), She then asked if he knew her 12-year-old daughter, and if he had sent her a friend request on Facebook, which Respondent replied that he did not. (App. 444-445). He testified that he hadn't had Facebook in some time and that if it were checked right now, there would be nothing on there. (App. 445). The solicitor then inquired if that was because he used the name "Jay Fowler," on Facebook, to which he replied that he "wouldn't know who Jay Fowler really is, I guess that's someone that's made up too," and simply offered a general denial of using the name "Jay Fowler." (App. 445-446).

Eliminating the solicitor's line of questioning regarding "Jay Fowler," the jury is still left to consider the victim's testimony describing the abuse, corroborating testimony from the victim's mother and sister, testimony from the victim's friend describing a similar circumstance of abuse at the hands of Respondent, as well as testimony from Respondent's ex-wife, Rachel, describing an

abusive marriage. As to any inference regarding Respondent's repeated pursuit of sexual relationships with minors, the friend testified as such, and testimony from Respondent and Rachel reflects that Respondent met Rachel in September of 2008 when she was 17 years old and he was 26 years old, and she moved in with him after two weeks of knowing each other. (App. 131-133; 379-380). They then married in February of 2009. (App. 133). Rachel described a controlling and abusive relationship in which Respondent made her drop out of high school, alienated her from her family and friends, limited her ability to work, and used their child to convince her to stay in the relationship. (App. 132-134; 142-144). Any detriment to Respondent's credibility or inference that he previously pursued relationships with minors was well impacted prior to this line of questioning by numerous other witnesses who contradicted his testimony and general denial of the allegations.

Balancing the impact of the solicitor's line of questioning regarding "Jay Fowler," which the Court of Appeals found to be intended to "suggest [Respondent] had approached yet another young girl – this time, a twelve year old," against the State's additional witness testimony that Respondent *had* pursued and engaged in sexual relationships with minors, there is not reasonable probability that, but for trial counsel's failure to object to the line of questioning, the jury would have had a reasonable doubt respecting guilt. *See Strickland*, 466 U.S. at 694-695, 104 S.Ct. 2052 ("The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

## II.

**The Court of Appeals erred by rendering an isolated prejudice analysis of the State's line of questioning regarding the no contact order by overlooking the evidence that supported the verdict, including testimony that hindered Respondent's credibility prior to any reference of the no contact order.**

As to this issue, the Court of Appeals similarly overlooked the reliability of the trial process as a whole in determining that counsel's alleged error was prejudicial. At trial, the prosecutor asked Respondent if there was a no contact order between him and his then fiancé, and the exchange led to a back and forth between the solicitor and Respondent on whether the no contact order had been dissolved. (App. 446-447). Trial counsel then objected, stating that Respondent and the solicitor were merely arguing. (App. 447).

At the PCR hearing, when asked about the State's line of questioning on the no contact order and whether he believed it to be objectionable, trial counsel testified, "I mean given the way that the back and forth went there, it doesn't bother me a whole lot, I don't think it really hurt him in the grand scheme of things as far as this trial goes. But it might be an improper question." (App. 714). The PCR Court found the objection to suffice as a challenge to the line of questioning and also noted that Respondent contradicted the solicitor's assertion that there was a no contact order and pending charge against him involving his then fiancé. (App. 772). However, the Court of Appeals disagreed and found that trial counsel should have objected earlier and on different grounds to the State's line of questioning.

Nevertheless, a deficiency analysis is not necessary when the claim can be disposed of on prejudice alone. *See Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065; *see also Rivers v. State*, Op. No. 28285 (S.C. Sup. Ct. filed May 28, 2025). In its prejudice analysis, the Court of Appeals noted that "Although [Respondent's] credibility was already questionable, this exchange further communicated the solicitor's belief about [Respondent's] lack of credibility[.]" *Gaskins*, at 11.

Such a brief analysis does not justify a conclusion that counsel's error "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 686, 104 S.Ct. 2052).

There was ample testimony that was presented to the jury prior to this exchange that called Respondent's credibility into question. Rachel's testimony did not portray Respondent as an exemplary husband, and she testified as to the manipulation and abuse she endured while married to him. Testimony from the victim's mother and sister corroborated the victim's testimony of the circumstances surrounding her relationship with Respondent. Additionally, the victim's friend testified to having a similar relationship with Respondent. In response, Applicant simply denied the allegations. *Strickland* prejudice requires a review of the entirety of the record and explicitly cautions that "not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." *Strickland,* 466 U.S. at 693, 104 S.Ct. 2052. *See Harrington v. Richter*, 562 U.S. at 112, 131 S.Ct. 770 (explaining that to establish prejudice "[t]he likelihood of a different result must be substantial, not just conceivable").

While credibility is essential in cases where the case in chief is based on testimonial evidence, it does not render the verdict unreliable when the record reflects that Respondent's credibility was properly called into question through numerous witnesses. Without assessing whether the trial as a whole was fundamentally unfair or unreliable would allow for Respondent to receive a windfall based on an isolated error. Credibility concerns were present and apparent prior to this line of questioning and in its absence, the jury would inevitably have reasonable concerns regarding Respondent's credibility. Further, the jury was properly instructed as to their duty in judging the credibility of the evidence and based on the questions from the jury, the no

contact order nor credibility concerns contributed to their inquiries. (App. 499; 507-509). The Court of Appeals thus erred in its prejudice conclusion and perceived the effect of the line of questioning in an isolated lense contrary to *Strickland's* intent.

## CONCLUSION

Based on the foregoing, Petitioner respectfully asks this Court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

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