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**Oct 17 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

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ANTHONY BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000551

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BRIEF OF PETITIONER

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SARAH E. SHIPE  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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### **ISSUE PRESENTED**

Did the post-conviction relief court err in finding defense counsel was not ineffective for failing to object to statements made by the solicitor during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt?

## STATEMENT

A Spartanburg County grand jury indicted petitioner for committing a lewd act upon a minor and criminal sexual conduct with a minor, first degree. App. 518-21. Petitioner's case was called to trial for the second time on March 25, 2019, before the Honorable R. Keith Kelly, and a jury.<sup>1</sup> Jeremy Thompson represented petitioner. Wendy Hallford and Hope Coleman, assistant solicitors, prosecuted for the state. App. 1

On March 27, 2019, the jury found petitioner guilty as indicted. App. 399, l. 23 – 400, l. 15. Judge Kelly sentenced petitioner to life imprisonment for criminal sexual conduct with a minor in the first degree, and fifteen years' imprisonment for committing a lewd act upon a minor. App. 406, ll. 10-16.

Appellate counsel, Robert Dudek, filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The Court of Appeals dismissed the appeal. *State v. Briggs*, 2021-UP-380 (S.C. Ct. App. filed Nov. 3, 2021).

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 408-14. On October 18, 2022, an evidentiary hearing was held before the Honorable Brian M. Gibbons. App. 431-89. Rodney Richey represented petitioner, and Chelsey Marto represented the state. App. 431.

On March 21, 2023, Judge Gibbons signed an order denying PCR. App. 499-517. The PCR court found petitioner did not meet the burden of proof concerning his allegation that defense counsel was ineffective for failing to object to the state's Golden Rule argument during closing. The PCR court agreed with defense counsel that the referenced passage was not a

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<sup>1</sup> Petitioner's 2010 convictions for first degree criminal sexual conduct with a minor and lewd act were overturned on appeal from the denial of his application for post-conviction relief. *Briggs v. State*, 421 S.C. 316, 806 S.E.2d 713 (2017). Petitioner was tried and convicted a second time by the state in 2019.

“Golden Rule argument,” and was not objectionable. The court further found no prejudice because this passage was “not so crucial as to undermine the result” of trial. App. 515.

On December 18, 2023, counsel filed the petition for a writ of certiorari. The state filed its return on May 13, 2024. On September 18, 2025, this Court issued an order granting certiorari and ordering briefing.

This brief of petitioner follows.

## STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. *Smalls v. State*, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839–40 (2018). The reviewing court must defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them. *Id.* (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, the appellate court reviews questions of law de novo, with no deference to the PCR court. *Id.*

“The trial court has broad discretion when dealing with the propriety of the solicitor’s argument, including the question of whether to grant a defendant’s mistrial motion.” *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). “The trial court’s discretion will not be overturned absent a showing of an abuse of discretion amounting to an error of law that prejudices the defendant.” *Id.* “On appeal, the appellate court will view the alleged impropriety of the solicitor’s argument in the context of the entire record.” *Id.* at 324, 468 S.E.2d at 625. “The appellant has the burden of proving they did not receive a fair trial because of the alleged improper argument.” *Id.* at 324, 468 S.E.2d at 625.

## ARGUMENT

The PCR court erred in finding defense counsel was not ineffective for failing to object to statements made by the solicitor during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt.

### **Relevant facts**

The alleged victim (minor) was fifteen years old at the time of petitioner's trial. She was living with her grandmother, Donna Parker, in North Carolina. App. 56, l. 4 – 57, l. 24. Petitioner was minor's mother's live-in boyfriend in 2008-2009 when the alleged conduct occurred. Minor was four or five years old at that time. Minor's mother did not testify at trial. App. 57, l. 1 – 58, l. 21.

Minor testified that, while living in Spartanburg County in 2008, she shared a bedroom with her sister. Her brother had his own room. She said petitioner and her mother slept on a "pull-out couch in the living room." This was the year minor started K-4 at Chesnee Elementary School. App. 58, l. 19 – 59, l. 14.

Minor testified that her mother left for work early in the morning and her siblings rode an early school bus leaving her alone with petitioner before she got on a school bus midmorning. Minor claimed petitioner touched her sexually and had oral sex with her before she left for school in the morning. App. 60, l. 1 – 62, l. 23. She testified petitioner would then "walk [her] to the bus." R. 62, l. 21 – 63, l. 3. Minor did not tell anyone about the situation "because [she] was scared." R. 63, ll. 23 – 24. At some future time, minor told her grandmother, Donna Parker, that petitioner had been touching her. App. 66, l. 1 – 67, l. 4.

Throughout closing argument, the solicitor implied to the jury that it was nonsensical that

minor would “fabricate” this story. App. 352, ll. 8-20; 353, ll. 9-10; 358, ll. 12-14; 381, ll. 19-

22. Additionally, the solicitor made the following remarks:

So let's talk about lying for just a minute. Now, there are people who are pathological liars and they lie about everything. We're gonna set them aside, we're not considering them. Typically [people] will lie for two reasons, to get out of trouble or to get some kind of a benefit.

...

[W]hat kind of benefit did [minor] get from this? She got to talk to multiple people about a sexual experience and she's a little kid. And she tells about this and then she finds out that her mom is still talking to her abuser. So she got no parental support. She got to have a gynecological exam, which none of you men have experienced but they are not fun at all. So she had to go through that.

App. 348, l. 16—349, l. 12.

...

[I]t's difficult for people to talk in public. That's one of the number one fears. When y'all came in and you sat down and you found out that you were gonna have to stand up and you're gonna have to talk about your name and who your spouse is and where you work and where your spouse works, most of you got a knot in the pit of your stomach.

App. 349, ll. 13-19.

And then when you realized it was going in alphabetical order and it was getting closer to your name, that knot probably got a little bit worse and your heart starts pounding and your throat starts to constrict because you're gonna have to stand up and talk about you briefly in front of a bunch of strangers and it was very scary for most of you. Imagine if what the clerk of court had said to you is stand up and tell me about your worst sexual experience. Think of what that would have been like.

App. 349, l. 20—350, l. 4 emphasis added. Defense counsel did not object during the solicitor's closing argument.

At petitioner's PCR hearing, defense counsel admitted he did not make an objection to the state's closing argument. Counsel testified he did not object because he disagreed that the solicitor's comment was objectionable as a Golden Rule argument. App. 476, ll. 2-17.

## Discussion

The PCR court erred by summarily finding the solicitor's impermissible remarks to the jury during closing argument were not Golden Rule arguments and were, therefore, not objectionable. The PCR court erred finding there was no prejudice because this portion was "not so crucial as to undermine the results of the proceeding." App. 515.

The state's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981). "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." *Brown v. State*, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009) (Quoting *State v. Reese*, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)).

Generally, "[t]he 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) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). Solicitors may not vouch for a witness's credibility, because doing so improperly invades the province of the jury and places the government's prestige behind the witness. *Tappeiner v. State*, 416 S.C. 239, 250–51, 785 S.E.2d 471, 476–77 (2016) (citing *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001)) (stating that a solicitor improperly vouches for a witness's credibility "by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony"); *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). Thus, solicitors must restrict closing remarks to the record and the reasonable inferences that may be drawn therefrom. *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

Additionally, solicitors must tailor their remarks “so as not to appeal to the personal biases of the jury” or “arouse the jurors' passions or prejudices.” *Tappeiner* at 250-251, 785 S.E.2d 471 (quoting *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). Accordingly, solicitors should avoid comments that ask jurors to place themselves in the victim's—or another party's—shoes, because those types of comments tend to “completely destroy all sense of impartiality of the jurors.” *Brown v. State*, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009) (quoting *State v. Reese*, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)).

Improper comments do not automatically require reversal if they are not prejudicial to the defendant. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). On appeal, the court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there was overwhelming evidence of the defendant's guilt. *Id.* The appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.* The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974); *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760, cert. denied, 522 U.S. 853 (1997).

In *State v. New*, this Court held that the solicitor's comments “during closing argument that defendant's accomplice, who had entered guilty plea and testified for [the] state, had nothing to gain by testifying, and was exposing himself to danger in prison by being considered a ‘rat,’ were based on reasonable inferences from evidence, and were not an impermissible attempt to bolster his credibility.” 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999).

In *Fortune v. State*, our Supreme Court held the solicitor engaged in prosecutorial misconduct by remarking, during closing, “that it was his job to ‘present the truth,’ that he had a

statutory duty to screen cases and would have dismissed the case if he had determined defendant was not guilty, and that the job of defense attorneys was to manipulate the truth, shroud the truth, and confuse jurors,” and the solicitor’s improper remarks unfairly prejudiced defendant, depriving him of a fair trial. 428 S.C. 545, 837 S.E.2d 37, (2019). The Court specifically found the solicitor’s “improper remarks violated the defendant’s rights under the Due Process Clause,” and reversed the denial PCR. *Fortune*, at 547, 837 S.E.2d at 38 (2019).

In *Brown v. State*, our Supreme Court held trial counsel’s failure to object when the solicitor impermissibly asked the jury to “speak up” for the child victim during closing did not prejudice defendant and did not constitute ineffective assistance of counsel. 383 S.C. 506, 680 S.E.2d 909 (2009). In that case the Court agreed with the PCR court that trial counsel was deficient in failing to object to the solicitor’s improper closing argument. *Id.* at 517, 680 S.E.2d at 915. However, the Court found no prejudice where the comments were at the very end of closing and limited, and there was overwhelming evidence of Brown’s guilt where the state presented four eyewitnesses to Brown’s sexual misconduct against the child. *Id.* at 517-518, 680 S.E.2d at 915-916.

In *Tappeiner v. State*, the Court reversed the denial of PCR and held defendant was prejudiced by trial counsel’s erroneous failure to object to the state’s improper comments during closing argument. 416 S.C. 239, 785 S.E.2d 471 (2016). In that case the Court found trial counsel was deficient in failing to object to the solicitor’s repeated vouching for the victim’s credibility throughout closing, and the solicitor’s emotional appeal at the conclusion of its closing. *Id.* at 252, 785 S.E.2d at 477-78.

Here, trial counsel was deficient for failing to object to the state’s obvious appeal to the emotions of the jury in a case that came down to witness credibility. In its order, the PCR court


points to one specific remark made during closing where the solicitor asked the jury why the minor would fabricate evidence. App. 514. That statement in combination with numerous similar statements throughout was impermissible vouching. However, the most prejudicial comment made during closing was when the solicitor asked jurors to consider what it would feel like to recount their “worst sexual experience.” This invitation to the jury did precisely what *Brown* and *Tappeiner* warned against. The solicitor directly implores jurors to put themselves in minor’s shoes by considering how they would feel recounting a delicate experience in front of others.

The PCR court erred in finding “this portion of closing was not so crucial as to undermine the results of the proceedings.” App. 515. Here, as in *Tappeiner*, petitioner was prejudiced by remarks made during the solicitor’s closing where there was no physical evidence in the case, only the minor’s assertion of petitioner’s conduct. *See Tappeiner*, at 253, 785 S.E.2d at 478 (reasoning evidence of Tappeiner’s guilt was not overwhelming where the case was entirely dependent on a credibility determination between the prosecution’s witnesses and the defense’s witness).

Moreover, this case was undeniably “emotionally charged” where it involved alleged criminal sexual conduct with a young child. Thus, the solicitor’s appeal to the jury to put themselves in the shoes of the minor by imagining they had to discuss their worst sexual experience impermissibly invited the jury to set aside impartiality and consider the evidence from the “subjective position of the child.” *See Brown v. State*, 383 S.C. 506, 516–17, 680 S.E.2d 909, 915 (2009).

**CONCLUSION**

By reason of the foregoing argument, petitioner respectfully requests this Court reverse the lower court's denial of post-conviction relief and remand his case for a new trial.

  
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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of October, 2025.

**RECEIVED**

**Oct 17 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

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ANTHONY BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

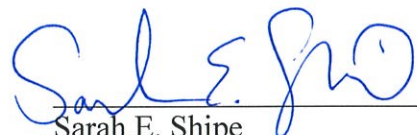
APPELLATE CASE NO. 2023-000551

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Petitioner in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Anthony Neil Briggs, #342410, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 17th day of October, 2025.

  
\_\_\_\_\_  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

## Leverett, Scott

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**From:** Leverett, Scott  
**Sent:** Friday, October 17, 2025 3:00 PM  
**To:** Mark Farthing  
**Cc:** Caroline Collins; Shipe, Sarah  
**Subject:** 2023-000551 - Anthony Briggs v. State - Brief of Petitioner  
**Attachments:** 2023-000551 - Anthony Briggs v. State - Brief of Petitioner.pdf

Dear Mr. Farthing,

Attached please find a copy of the Brief of Petitioner in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett  
Admin. Asst. for Sarah Shipe  
Appellate Defense