

**RECEIVED**  
**Oct 24 2025**  
**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

The Honorable Kristi Curtis, Circuit Court Judge

---

Case No. 2022-001326  
(2022-CP-22-00684)

Stanley Moultrie,

Petitioner,

vs.

The State of South Carolina,

Respondent.

---

**PETITION FOR REHEARING**

---

Pursuant to Rule 221(a), SCACR, and Rule 208(b)(1)(D), SCACR, Petitioner, by and through undersigned counsel, respectfully petitions this Honorable Court for rehearing of its decision affirming the denial of post-conviction relief. Petitioner asserts that the Court misapprehended both controlling law and material facts in its prejudice analysis under *Strickland v. Washington*, 466 U.S. 668 (1984), resulting in a manifest injustice to Mr. Moultrie. Specifically, Petitioner submits that he was unduly prejudiced by his counsel's failure to object to the solicitor's improper and explicit vouching for the State's key eyewitness during closing argument.

Rule 221(a) of the South Carolina Appellate Court Rules authorizes a petition for rehearing where the Court has overlooked or disregarded material facts or misconstrued controlling law. The

principal error in the Court’s opinion is its conclusion that Mr. Moultrie failed to demonstrate prejudice, notwithstanding unrefuted evidence that the solicitor’s closing argument statements constituted impermissible personal vouching on the central issue of witness credibility.

South Carolina precedent holds that a prosecutor may not express personal belief in a witness’s credibility. Such vouching gravely risks replacing the jury’s judgment with the perceived authority of the State and is condemned because it can unfairly tip the balance in close cases. In Mr. Moultrie’s case, the closing argument did not merely reference the witness’s demeanor, but explicitly vouched for her: the solicitor stated that what the witness “showed on that stand was pure and genuine in every aspect in every way it could possibly be,” that she “is about as real as it gets,” and that her emotion was “genuine.” The solicitor further asserted that “Ms. Messinger’s testimony is ... enough by itself to support a conviction ... if you find it credible—which in my opinion she was....” He framed the decision as requiring the jury to believe the victim was either “lying or ... just not capable of telling the truth” to acquit. These comments cross the line established in *State v. Kelly*, *State v. Shuler*, and *State v. Thomas*, and are not mere fair comment on the evidence, but rather explicit personal assurances by the sovereign’s advocate.

The Court of Appeals, in its prejudice analysis, reasoned that these improper statements were harmless in light of standard instructions and the remaining evidence. However, this analysis is inconsistent with the South Carolina Supreme Court’s guidance that this type of vouching “can rarely be harmless,” because it invites the jury to accept the government’s personal assurance rather than exercise independent assessment. See *State v. Thomas*, 287 S.C. 411, 339 S.E.2d 129 (1986).

The Court further misapplied *Strickland*'s prejudice prong by viewing the case as supported by overwhelming evidence, relying on circumstantial physical evidence and the jury's split verdict as evidence that the vouching did not affect the outcome. This overlooks the Supreme Court's requirement, clarified in *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018), that the overwhelming evidence standard is met only where proof is so compelling that a different result would not be reasonably probable—typically involving confessions, DNA, or uniquely incontrovertible evidence. Here, the State's proof was circumstantial, and the conviction ultimately depended on the jury's credibility assessment of the eyewitness, whose testimony the solicitor improperly elevated through personal vouching.

Notably, the trial court's instructions prior to closing heightened the prejudice: jurors were told that attorneys are "officers of the court ... to help you in your search for the truth." With that imprimatur, the solicitor's statements carried even greater weight and threatened to substitute his "truth" for the jury's own. This factor was not adequately considered in the Court of Appeals' prejudice analysis.

Furthermore, the opinion's observation that the jury acquitted Mr. Moultrie of kidnapping does not negate the risk of prejudice on the armed robbery conviction, since the State's case on robbery was expressly made to turn on the jury's view of the victim's credibility. It cannot be presumed that the jury compartmentalized the improper comments—indeed, the split verdict may indicate the jury's struggle with the evidence and thus reinforce the reasonable probability of a different outcome had the improper vouching been promptly and properly addressed by counsel. For all these reasons, Petitioner respectfully submits that the Court's decision misapprehended settled law regarding prosecutorial vouching and its proper role in *Strickland*'s prejudice analysis.

Petitioner submits that there is at least a reasonable probability that, but for counsel's failure to object and request corrective action, the outcome would have been different. Petitioner therefore respectfully requests rehearing, withdrawal of the opinion, and remand for a new trial. Alternatively, Petitioner requests that the Court amend its opinion to address the improper prejudice analysis and remand for relief consistent with that finding.

### CONCLUSION

The Court should grant the petition for rehearing.

Respectfully submitted,

/s/ Elizabeth Anne Franklin-Best  
Elizabeth Franklin-Best, P.C.  
3710 Landmark Drive, Suite 113  
Columbia, South Carolina 29204  
(803) 445-1333  
elizabeth@franklinbestlaw.com

*Counsel for Petitioner*

### CERTIFICATE OF SERVICE

Counsel hereby certifies she has served a copy of this petition for rehearing on Ambree Muller via email at Ambree.Muller@scag.gov on this date, October 24, 2025.

/s/ Elizabeth Franklin-Best