RECEIVED

Dec 12 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
The Hon. D. Garrison Hill, Trial Judge
The Hon. Alex Kinlaw, Jr. PCR Judge

Appellate Case No. 2025-001072

State. . . . . Petitioner,

v.

Jerald D. Gaskins, Jr. . . . . Respondent.

BRIEF OF RESPONDENT

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S.C. Bar No. 6188

Attorney for Respondent

Index

Page:

Table of Authorities ii

Counter Statement as to the Questions Presented. 1

Argument:

Question I: Did the Court of Appeal err in reversing the conviction of Jerald Gaskins when trial counsel had failed to object to a line of questioning involving a 12-year-old girl when the State failed to authenticate the Facebook exchange and claimed, with no proof, Mr. Gaskins was using the name "Jay Fowler" when the testimony was prejudicial to Mr. Gaskins?. 2

Question II: Did the Court of Appeals err in 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 supported the verdict, including testimony that hindered Respondent's credibility prior to any reference of the no contact order? 10

Conclusion 19

Table of Authorities

Cases: **Page:**

State v. Brown, 297 S.C. 27, 374 S.E.2d 669 (1988). 11, 12

Berger v. United States, 295 U.S. 78 (1935) 12

Brecht v. Abrahamson, 507 U.S. 619 (1993) 9

Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017). 8

Chapman v. California, 386 U.S. 18 (1967). 9

Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001) 17

Gaskins v. State, 2025-UP-046, 2025 WL 407021 (S.C. Ct. App. Feb. 5, 2025). 14

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 14

Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002) 16

State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) 7

State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999) 13

State v. Makins, 433 S.C. 494, 860 S.E.2d 666 (2021). 16

State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990) 7, 12

State v. Simmons, 423 S.C. 552, 816 S.E.2d 566 (2018) 8, 16

Swofford v. State, Op. No. 2025-UP-294 (S.C.Ct.App. dated Aug. 13, 2025). 10

Tappeiner v. State, 416 S.C. 239, 785 S.E.2d 471 (2016). 7

Thompson v. State, 423 S.C. 235, 814 S.E.2d 487 (2018). 6

Vail v. State, 402 S.C. 77, 738 S.E.2d 503 (Ct. App. 2013) 6

Rules:

Rule 404b of the South Carolina Rules of Evidence 9

Rule 801(d)(1)(D), South Carolina Rules of Evidence 17

S.C. App. Ct. R. RULE 407, RPC 3.4 11

Other Authorities:

ancient-origins.net. 14

Counter Statement as to the Questions Presented

Question I: Did the Court of Appeals err in reversing the conviction of Jerald Gaskins when trial counsel had failed to object to a line of questioning involving a 12-year-old girl when the State failed to authenticate the Facebook exchange and claimed, with no proof, Mr. Gaskins was using the name "Jay Fowler" when the testimony was prejudicial to Mr. Gaskins?

Question II: Did the Court of Appeals err in 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 supported the verdict, including testimony that hindered Respondent's credibility prior to any reference of the no contact order?

Argument

Question I

Did the Court of Appeals err in reversing the conviction of Jerald Gaskins when trial counsel had failed to object to a line of questioning involving a 12-year-old girl when the State failed to authenticate the Facebook exchange and claimed, with no proof, Mr. Gaskins was using the name "Jay Fowler" when the testimony was prejudicial to Mr. Gaskins?

The State first urges that the cross-examination of Mr. Gaskins about a Facebook conversation with a 12-year-old girl was not prejudicial. This conclusion is inconsistent with the prior precedents of this court. The State, in the cross-examination of Mr. Gaskins asked about his allegedly texting, through Facebook, with a 12-year-old girl. With no objection from defense counsel, the State was permitted to ask about a woman named "Jennifer Anglin" and whether he had ever had dinner at her house. Then the cross-examination turned to Ms. Anglin's daughter.

> Q. (By Ms. Hodge) Do you know Jennifer Anglin's daughter, [redacted]?
> A. (By Mr. Gaskins) Not really.
> Q. Age 12?
> A. Not really
> Q. You not really did?
> A. No, ma'am. I'm - - what I'm saying is I don't know [redacted], if she's a Facebook friend or whatever. You can be anybody on Facebook. I don't know.
> Q. Did you send her a Facebook request?
> A. Not to my knowledge, I did not.
> Q. Well, did you - -
> A. Because I haven't had Facebook in sometime.
> Q. October of 2014. October 9, 2014 - -
> A. That would be incorrect. I haven't had Facebook in sometime. If you would check it right now, I guarantee you there's nothing on there.
> Q. Is that because you started using the name Jay Fowler now?
> A. No. I wouldn't know who Jay Fowler is. I guess that's something that's made up, too, I guess.

Q. Yeah. It's like somebody out there is making up a lot of stuff up on you?
A. Well, ma'am, that is your duty to find that out, isn't it? It's not mine. Because I have no recollection, no knowledge of anything happening - -what you're throwing at me.
App. at 448, l 18 to 449, l 21.

A few pages later, the assistant solicitor was questioning Mr. Gaskins about alleged Facebook messages he had with a witness who had testified against him. He had denied messaging with her. In this cross-examination he was asked the following:

Q. (By Ms. Hodge) Okay. So why did you send her a message on Facebook two weeks ago asking her to call you?
A. (By Mr. Gaskins) I never sent her a message on Facebook asking her to call me. Because I haven't had a Facebook since 2012.
Q. Well, maybe you did it under Jay Fowler?
A. Maybe not. Prove that ma'am.
Q. So is it your testimony you did not send her a Facebook message - -
A. I'm telling you right now, I never sent her a message on Facebook. Because I haven't had Facebook since 2012, since the day I was arrested on November 14th of 2012.
APP. at 458, l 21 to 459, l 6.

After previously cross-examining Mr. Gaskins about the name "Jay Fowler," the assistant solicitor brought it up again when discussing an alleged Facebook exchange with another girl. The cross-examination shows the State was claiming that Mr. Gaskins was having a Facebook messenger exchange with a 12-year-old girl some four months before his trial started while he was out on his bond. Something more prejudicial is hard to imagine.[1] Such testimony was obviously prejudicial. In addition, a Facebook message two weeks before the start of the trial would be easy to produce if such message existed. The failure to ask the friend of the

[1] The State had a printout of what is apparently a Facebook exchange with the 12 year girl. Supp. APP. at 840. The State at the trial nor the Post Conviction Relief hearing authenticated the messages. The State never produced nor attempted to authenticate any alleged messages between Mr. Gaskins and the other witness. APP. 312, ll 22-24; 326, ll 2-4; 323, ll 3-4.

complaining witness if she received such a text and the failure to produce the text raises a serious question as to whether the text message actually exists.

In the closing argument, the State acknowledged, "There were only two witnesses to this crime, the Defendant and [complaining witness]" APP. at 494, 17-19[2] The State further argued, "So what you've got to decide from our two witnesses to this crime what's true, what [complaining witness] told you or what the Defendant told you. There's really no middle ground. You either believe her about this or you believe him." APP. at 496, ll 4-8.[3] The argument of the State made the credibility of Mr. Gaskins the most important part of the case. The State then argued:

> What he came to court and presented to you was everything is a lie, everything. No, I never texted that dad. No, I never texted that sister. No, I don't even like country music. No, I never went to this concert. No, I never went to that concert where I got into it with my wife. No, I don't have Facebook, no, no, no, no, no. nothing.
> APP. at 498, ll 16-21

The State in essence claimed as Mr. Gaskins lied about having Facebook and texting two people, he lied about the complaining witness. The State produced no evidence that Mr. Gaskins ever had Facebook after his arrest. They produced no evidence Mr. Gaskins had a Facebook account under the name of "Jay Fowler." The State never produced text messages from anyone that established Mr. Gaskins sent a single Facebook or text message to any witness claiming to have received one. The record in this case now shows Mr. Gaskins told the truth about not

---

[2] The name of the complaining witness was redacted from the original transcript. The transcript from the direct appeal substituted the word "victim." Counsel in this appeal prefers the words "complaining witness."

[3] The State erred as there is a third choice. If the jury does not know whom to believe, they should vote not guilty.

texting the father of the complaining witness. The "lies" the State claims Mr. Gaskins told are either not lies or not proven.[4]

The State has argued, "Rather than affording trial counsel a highly respected performance review based on his perception that an objection would have been 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." BOP at 15. The State did not only mention "Jay Fowler" during her cross-examination of the Jay Fowler text message, they asked about it doing other cross examination. She also placed emphasis on it in her closing argument. The essence was if he was not honest about Jay Fowler he was not honest about anything.

No forensic evidence exists in this case to support the testimony of the complaining witness. The complaining witness stated on at least eight occasions full intercourse occurred. APP. at 196, ll 8-17; 201, ll 6-12; 204, ll 4-5; 207, ll 17-23; 210, ll 1-6; 217, ll 8-15(describing two occurrences); 227, ll 4-7. The testimony from Dr. Croswell did not support this. She conducted her examination on December 5, 2012, just a few months after the complaining witness said the alleged abuse stopped. APP. at 335, l 13. Dr. Croswell testified:

> Q. (By Ms. Hodge) Would you call that a normal examine or - -
> A. (By Dr. Croswell) It was a normal examine.
> Q. All right. And what makes something a normal exam versus an abnormal

---

[4] The court of appeals did not rule Mr. Gaskins was entitled to relief on the issue of the text messages allegedly being made between Mr. Gaskins and the sister of the complaining witness. The basis for the holding was the issue was not preserved for review because PCR counsel did file a specific Rule 59e as to this issue as the PCR court did not rule on the issue. The holding by the court of appeals does not prevent this court from recognizing that based upon the testimony at the PCR hearing and an analysis of the messages, even this evidence against Mr. Gaskins is highly suspect. APP. at 666, l 21 to 676, l 24.

exam?
A. So, at times, there can be physical findings that would indicate trauma of some sort, either bruising or abrasions of some sort, either bruising or abrasions. The hymenal tissue is a tissue that partially covers the entrance into vaginal canal. At times there can be a laceration or either what we call transection when a tearing of the hymen has healed. All of those areas looked normal in [complaining witness] APP. at 339, l 17 to 340, l 2.

In reversing a case where there is no physical evidence and the case turned on the credibility of the parties involved, this court has said, "[T]he outcomes of Petitioner's jury trial hinged on Victim's credibility, and there was otherwise an absence of overwhelming evidence of guilt." *Thompson v. State*, 423 S.C. 235, 249, 814 S.E.2d 487, 494 (2018). This court concluded, "The properly admitted evidence of Petitioner's guilt was not strong enough to overcome trial counsel's failure to object to Dr. Benedetto's inadmissible bolstering testimony." *Id.* at 250, 814 S.E.2d at 495. The evidence in this case is not strong enough to overcome the failure of trial counsel to object to numerous improper attacks on the credibility of Mr. Gaskins. *See, also, Vail v. State*, 402 S.C. 77, 91, 738 S.E.2d 503, 511 (Ct. App. 2013)("In light of the circumstantial evidence presented to the jury in addition to the heavy emphasis on Victim's credibility, we cannot find the admission of the inadmissible hearsay was harmless beyond a reasonable doubt."). As noted above, the State, in closing, placed special emphasis on the credibility of the complaining witness as opposed to the credibility of Mr. Gaskins.

In reversing a criminal sexual conduct with a minor case because of the improper closing argument of the State, this court said, "Similarly, given the lack of physical evidence, the solicitor's emotional plea that Tappeiner was a bad actor and could not be trusted to watch the jurors' own family members is reasonably likely to have had a

substantially stronger impact than would be the case in a trial where there was additional, independent evidence of the defendant's guilt." *Tappeiner v. State*, 416 S.C. 239, 253–54, 785 S.E.2d 471, 478 (2016). In the present case, the failure to object to the numerous attacks on the credibility of Mr. Gaskins was also likely to have had a substantially greater impact with the jury than if there had been other proof of Mr. Gaskins guilt. The State completely failed to introduce the actual Facebook or text messages the State claimed were exchanged between Mr. Gaskins and at least two of the witnesses. The State even suggested one exchange was just two weeks before trial. APP. at 458, ll 21-22. Even with this alleged cu-rrent exchange, the State failed to document the alleged message.

In reversing another case where the case turned on the credibility of the complaining witness, this court said, "There was no physical evidence presented in this case. The only evidence presented by the State was the children's accounts of what occurred and other hearsay evidence of the children's accounts. Because the children's credibility was the most critical determination of this case, we find the admission of the written reports was not harmless." *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94–95 (2011). "Error which substantially damages the defendant's credibility cannot be held harmless where such credibility is essential to his defense." *State v. Reeves*, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). Similarly, in this case the most critical determination was the credibility of the complaining witness and Mr. Gaskins. The State in closing argued this was the critical determination. The improper attacks on Mr. Gaskins' credibility were not harmless.

In *Briggs v. State*, 421 S.C. 316, 333, 806 S.E.2d 713, 722 (2017), this court said, "On one hand, there was no physical evidence any sexual abuse occurred, and thus the victim's credibility was very important. Singleton testified the case 'turned on the credibility of the little girl,' and he told his client 'it would come down to whether they believed her or not.'" The State at trial made the same argument to the jury in this case.

Finally, in *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 574 (2018) this court reversed a criminal sexual conduct with a minor as to hearsay testimony by a doctor who testified for the State. This court noted, "The State highlighted the testimony of Dr. Simmons, calling him as the first witness and emphasizing the importance of his testimony in determining credibility for a case that lacked any physical evidence." *Id.* at 566, 816 S.E.2d at574. As to the prejudice of the hearsay statement, this court said, "It is simply a bridge too far to conclude that Dr. Simmons' improper testimony was harmless beyond a reasonable doubt." *Id.* at 567, 816 S.E.2d at 574. In this case, it is also a bridge too far to believe the improper and unobjected to attacks on the credibility of Mr. Gaskins were harmless beyond a reasonable doubt. This is especially true now that the Post Conviction Relief hearing has proven several of the accusations by the State of Mr. Gaskins lying are simply not true. Inadmissible prejudicial evidence is still not admissible even though it true. Here, we have inadmissible evidence some of which has been proven to be false. A fact beyond dispute in this case is that Mr. Gaskins told the truth when he said he did not text the father of the complaining witness. The State in closing argued Mr. Gaskins lied about this text exchange.

The court of appeals correctly held this evidence was not admissible and that the

State has failed to show the evidence, beyond a reasonable doubt, was not prejudicial to Jerald Gaskins. The State bears the burden of proving the error is harmless beyond a reasonable doubt. "[W]e held that 'before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt.' The State bears the burden of proving that an error passes muster under this standard." *Brecht v. Abrahamson*, 507 U.S. 619, 630(1993). *See, also, Chapman v. California*, 386 U.S. 18, 26 (1967)("Under these circumstances, it is completely impossible for us to say that the State has demonstrated, beyond a reasonable doubt, that the prosecutor's comments and the trial judge's instruction did not contribute to petitioners' convictions."). The State in this case has not demonstrated the attacks on the credibility of Mr. Gaskins were harmless beyond a reasonable doubt.

In an attempt to claim the evidence is overwhelming, the State argues on appeal that the uncorroborated claim of the 404b witness is sufficient to make the evidence overwhelming. This is not the type of evidence this Court has typically accepted to make the evidence attacking the credibility harmless. Again, the State never documented any alleged text exchange with this witness, even though the State suggested one text message occurred just two weeks before the trial. APP. 458, APP. l 21 to 459, l 6.

In arguing the lack of prejudice, the State has urged, "In making the prejudice determination, a court must 'consider the totality of the evidence before the jury.'" BOP at 15. In looking at the totality of the evidence, this would include the unobjected to prejudicial evidence even if the court of appeals did not rule on the issue. This court simply cannot wear blinders as

to all the prejudicial evidence elicited by the solicitor to which trial counsel raised no objection.[5] As noted previously, this is especially now that the Post Conviction Relief hearing has established that Mr. Gaskins was truthful when he denied sending any text messages to the father of the complaining witness.

Question II

Did the Court of Appeals err in 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 supported the verdict, including testimony that hindered Respondent's credibility prior to any reference of the no contact order?

The State contends that the court of appeals erred in overlooking "the reliability of the trial process as a whole in determining that counsel's alleged error was prejudicial." The "reliability of the trial process as a whole" has to include all the unobjected to prejudicial questions asked, whether the court of appeals agreed to review them or not. Neither this court nor the court of appeals can ignore facts unfavorable to the State under the guise of reviewing the trial process as a whole simply because the court of appeals elected not to review certain issues.

The State appears to have conceded that trial counsel was ineffective in failing to object to the improper questions the assistant solicitor asked about the criminal domestic violence charges and the alleged restraining order against him. The assistant solicitor improperly cross-examined Mr. Gaskins about pending charges of criminal domestic violence. APP. at 449, l 22 to 451, l 16. As part of this cross-examination, which the court of appeals found to be improper,

[5] This court should also take note that the assistant solicitor in this case is the same assistant solicitor who created the problem causing the reversal of a conviction in *Swofford v. State,* Op. No. 2025-UP-294 (S.C.Ct.App. dated Aug. 13, 2025)

the assistant solicitor placed her credibility against Mr. Gaskins. She asked the following:

> Q. (By Ms. Hodge) And have you been instructed by our office that that case is not dropped and you are not to have contact with her?
> A. (By Mr. Gaskins) Ma'am, I was told it was dismissed. So I don't know what's going on with it - -
> Q. Who were you told by?
> A. I guess your office.
> Q. No, sir. No one from my office - -
> A. Well, then - -
> Q. - - who were you told by - -
> A. - - I have no idea - -
> APP. at 450, l 22 to 451, l 7.

Had trial counsel made the proper objections, the State would not have been able to claim Mr. Gaskins lied about a lot of things. The assistant solicitor would not have been able to pit her credibility against Mr. Gaskins and in effect tell the jury, "I know the charges are not dismissed and he is lying." The South Carolina Rules of Professional Conduct states a lawyer should not "assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused . . . ." S.C. App. Ct. R. RULE 407 RPC 3.4. The cross-examination in this case violated that rule. Trial counsel should have made a timely objection.

Furthermore, this court has held on numerous occasions that a solicitor may not pit the credibility of the defendant against other witnesses. This court has said, "Once again, in the present case, we are compelled to reverse a conviction because the assistant solicitor forced Brown to attack the veracity of the investigating officers by inquiring whether the officers 'made the story up' about Brown's participation. The assistant solicitor compounded her error by challenging Brown that his 'made up' story was 'pretty convenient,' which pitted his testimony

another time against that of the officers." *State v. Brown*, 297 S.C. 27, 29, 374 S.E.2d 669, 670 (1988). How much more is this true when the solicitor implied to the jury she knew Mr. Gaskins was lying about when she was cross-examining Mr. Gaskins about the dismissal of the charges.

The State has argued that because other witnesses attacked Mr. Gaskins credibility, this error was harmless. The other witnesses had reasons to be against Mr. Gaskins. The same cannot be said for the prosecutor. As the United States Supreme Court has said about the attitude of jurors toward prosecutors, "Consequently, improper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none." *Berger v. United States*, 295 U.S. 78, 88 (1935). The improper suggestion by the prosecutor that she knew Mr. Gaskins was lying about the dismissal of the charges, easily could have had a greater impact on the jury than witnesses that the jury could perceive as having a bias against Mr. Gaskins.

Furthermore, as this Court has said, "Error which substantially damages the defendant's credibility cannot be held harmless where such credibility is essential to his defense." *State v. Reeves*, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). Here, the credibility of Mr. Gaskins was the only defense.

As previously noted, the assistant solicitor in her closing argument admitted the case turned on the credibility of Mr. Gaskins and the complaining witnesses. This court has in numerous cases held attacks on the credibility of the defendant or improper vouching or bolstering of the complaining witness is sufficient to overturn the conviction.

While the cases cited in the first issue suggest that the State has the burden of proving that the prejudice to Mr. Gaskins is not harmless, this court need not address that issue under the

facts of this case. The facts show that the credibility of Mr. Gaskins was not only attacked improperly, but in some cases was attacked with accusations that are now known to be false. These facts are more than sufficient to invoke the numerous cases cited herein that the attacks were improper and prejudicial.

The State had put forth no reason why those cases should now be overturned, repudiated or limited. Simply put, the State has put forth no valid reason for this court to overturn the opinion of the court of appeals

Cumulative errors

As to cumulative error, this court has said, "Respondent must demonstrate more than error in order to qualify for reversal on this ground. Instead, the errors must adversely affect his right to a fair trial." *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). In this case several improper attacks on the credibility of Mr. Gaskins were made by the State. In its brief the State appears to argue the attacks on the credibility of Mr. Gaskins were improper. The State only suggests that the improper attacks on credibility were not prejudicial or more precisely, even if prejudicial, were harmless beyond a reasonable doubt. As to an individual improper attack on credibility, the State may have some argument, even if the cases decided by this court hold otherwise. But if all the improper attacks on credibility are combined, the improper attacks on the credibility of Mr. Gaskins become overwhelmingly prejudicial and not harmless beyond a reasonable doubt. In making the determination of prejudice, this court should not ignore the texts with the father. While the court of appeals ruled the error in failing to object to the texts claimed to have been with the father was not error, they noted, as they should, that the Post Conviction relief hearing established that Mr. Gaskins was truthful when he denied on cross-

examination he had sent text messages to the father of the complaining witness.[6] The record at the PCR hearing also established the claim by the State that Mr. Gaskins sent text messages to the sister of the complaining witness, is highly questionable. These facts established by the record simply should not be ignored by this court in making a determination as to whether the errors were prejudicial to Mr. Gaskins. The cumulative effect of these attacks on the credibility of Mr. Gaskins is simply devastating. This court should not fail to recognize the cumulative affect of these attacks on the credibility of Mr. Gaskins. To do so, would be the equivalent of saying "a death by a thousand cuts" is not murder because no one cut would have caused the death.[7]

Additional Sustaining Grounds

This court has held, "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). The record in this case contains numerous additional sustaining grounds to sustain the unpublished opinion filed by the court of appeals. The

[6] The court of appeals in discussing this issue said, "We find it unlikely that the parent of a CSC victim would have cooperated with Petitioner's defense at trial, and it likely would have been dangerous for trial counsel to attempt to call him as a witness solely to address these text messages." *Gaskins v. State*, № 2025-UP-046, 2025 WL 407021, at 7 (S.C. Ct. App. Feb. 5, 2025). While the second point may have some validity, the court of appeals failed to recognize that counsel at the PCR hearing did contact and interview the father before the hearing with no problem.

[7] "Being executed is rarely a good way to go, but Lingchi—also known as 'death by a thousand cuts'—is one of the worst. This brutal method of execution was used in imperial China from the 10th century until its abolition in 1905." https://www.ancient-origins.net/news-history-ancient-traditions/lingchi-execution-0021309. (Visited Dec. 4, 2025). Taylor Swift also recorded a song with this title.

consideration of additional sustaining grounds in this case is important because the ground upon which the court declined to accept the review of the issues is not known.

First, the court of appeals did not grant the writ of certiorari on all the issues requested by Mr. Gaskins.

During the trial, Mr. Gaskins was asked the following questions on cross-examination:

> Q. (By Ms. Hodge) You're not supplementing that by selling pills or pot?
> A. (By Mr. Gaskins) No, ma'am.
> Q. Okay
> A. Actually, I've never done a drug in my life.
> Q. I didn't ask you if you did drugs.
> A. I've never sold a drug in my life.
> APP. at 446, ll 10-16.

The court of appeals declined to hear this issue. No objection was made to this question by trial counsel. The question suggests that the assistant solicitor has knowledge that Mr. Gaskins had sold drugs to supplement his income. At no time did Mr. Gaskins make a comment that would open the door to such a question. In fact, the question was asked notwithstanding the representation of the State that Mr. Gaskins had no record upon which he could be impeached. APP. 366, ll 13-15. Under no known theory of law could this question have been admissible. The question introduced the issue of Mr. Gaskins being a drug dealer into a case involving criminal sexual conduct with a minor. Trial counsel was ineffective in failing to object to this testimony. Based upon the evidence in this case, the failure to object could have affected the outcome of the trial. No valid trial strategy was offered for not objecting. No valid trial strategy could exist for this error. As this Court has said "However, counsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently

prejudicial." *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). This issue alone could have been sufficient to reverse the conviction of Mr. Gaskins.

Two witnesses gave improper bolstering testimony which the court of appeals declined to review. They are discussed in detail as to Issue II in the original petition for writ of certiorari to the South Carolina Court of Appeals filed by Mr. Gaskins.

Trial counsel made no objection to this improper hearsay. Dr. Mary Fran Ratchford Croswell testified as to the details of what the complaining witness told her. She stated:

> Q. (By Ms. Hodge) And did she tell you - - what did she tell you about the types of abuse?
> A. (By Ms. Croswell) She described that the alleged perpetrator had performed oral sex on her. And that he had performed penile-vaginal penetration with her.
> APP. at 337, ll 19-23.
>
> A. (Dr. Croswell) She said the abuse started when she was 13. And that the last incident had been a couple of months prior to the medical appointment. It occurred either in his car or at his house.
> APP. at 338, ll 7-10

Dr. Croswell was not a treating physician. Law enforcement had referred the minor child to her to conduct a sexual abuse evaluation. APP. at 335, ll 19-20. This examination and its questions were obviously done for the purposes of developing evidence to be used in Court. As this Court has said "This improper testimony was nothing more than hearsay shrouded in a doctor's white coat, in violation of the South Carolina Rules of Evidence." *Simmons*, at 556, 816 S.E.2d at 568. The testimony of Dr. Croswell greatly exceeded the limited testimony permitted by this court in *State v. Makins*, 433 S.C. 494, 860 S.E.2d 666 (2021).

During the testimony of Officer Robert Perry, the State elicited several questions that constituted improper hearsay from the minor child. These questions greatly exceed the limitation

placed upon such comments by Rule 801(d)(1)(D) of the South Carolina Rules of Evidence. The Officer was asked:

> Q. (By Ms. Hodge) And who was the suspect in the report?
> A. (By Officer Perry) Mr. Gaskins
> Q. All right. And how old was Mr. Gaskins at this time?
> A. 30.
> APP. at 348, l 25 to 349, l 3.
>
> * * *
>
> Q. And did she disclose to you any sexual battery or sexual abuse?
> A. She did. In our conversation, she, actually disclosed sexual activities that occurred in multiple areas. She stated there was an assault that took place on Tigerville Road at a house that Mr. Gaskins was living at the time.
> Later on, there was one at - - at least, one that occurred at Magnolia Avenue where he had moved to.
> APP. at 350, ll 14-22.

The officer testified, without an objection, that the complaining witness had identified Jerald Gaskins as the person who assaulted her. The testimony was as follows:

> Q. (By Ms. Hodge) Was a suspect identified?
> A. (By Officer Perry) She identified by name and general description only.
> Q. All right. So who was the suspect in this case?
> A. She told me Jerald Gaskins was the suspect.
> APP. at 350, ll 16-19.

The answer by Officer Perry was improper and an objection should have been made. In *Dawkins v. State*, 346 S.C. 151, 155, 551 S.E.2d 260, 262 (2001) this Court stated the issue to be "Whether counsel was ineffective for failing to object to hearsay testimony that designated petitioner as the perpetrator of the sexual offenses?" In answering the question in the affirmative this Court stated, "Since the testimony was inadmissible hearsay, counsel's failure to object to the introduction of that evidence fell below an objective standard of reasonableness." *Id.* at 156, 551 S.E.2d at 263.

Had the court of appeals granted the petition on these issues, this court, under present

law, would have been required to affirm the court of appeals based on this improper testimony.

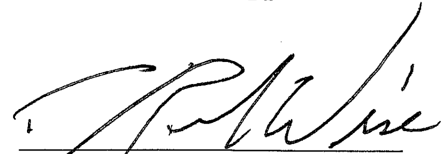
Finally, the court of appeals declined to rule on the issue of vouching for the credibility of the complaining witness as set forth in Question IV of the brief of Mr. Gaskins. As to the vouching issue Officer Perry was permitted, without objection, to testify as follows:

> Q. (By Ms. Hodge) And was it pretty easy for her to tell you what was - - to give you the statement, or were you having to prompt her a lot, or how was that going?
> A. (By Officer Perry) I felt like she was a little bit ashamed and kind of embarrassed not necessarily talking to me as a male, but talking about what had occurred to her. She presented herself as bright and intelligent. And she presented herself, to me as being a pretty articulate young lady, and kind of embarrassed that she got manipulated by Mr. Gaskins.
> APP. at 353, ll 5-14.

This improper vouching as to the credibility of the complaining witness was improper. This should also be an additional sustaining ground to affirm the decision of the court of appeals.

CONCLUSION

As the entire record and the prior precedents of this court amply support the holding of the court of appeals in this matter, this court should affirm the decision of the court of appeals in this matter. The entire record shows that Jerald Gaskins did not receive a fair trial in his case. As set forth in the additional sustaining grounds, this court should affirm the holding of the court of appeals as they form an independent basis for affirming the ruling of the court of appeals.



December 12, 2025

C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 6188

Attorney for
Jerald D. Gaskins, Jr.