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**Jan 20 2026**

STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. SUPREME COURT

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ON PETITION FOR WRIT OF CERTIORARI TO COURT OF COMMON PLEAS  
Appeal from Georgetown County  
Honorable Kristi Curtis, Circuit Judge  
Appellate Case No. 2025-002451

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STANLEY MOULTRIE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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## **RESPONDENT'S ISSUES PRESENTED**

- I. The Court of Appeals properly affirmed the PCR court's ruling that trial counsel was not ineffective for failing to object to the prosecutor's alleged vouching for the victim's credibility.

## STATEMENT OF THE CASE

A Georgetown County Grand Jury indicted Petitioner for kidnapping and armed robbery. On August 22-24, 2016, Petitioner proceeded to jury trial before the Honorable D. Craig Brown. Petitioner was convicted of armed robbery and acquitted of kidnapping. (App. 272). Based on his prior record, the trial court sentenced him to a mandatory term of imprisonment of life without parole (LWOP). (App. 277).

Petitioner filed a direct appeal, arguing the trial court erred in denying his motion for a mental health evaluation. (App. 307-321). The Court of Appeals affirmed in an unpublished opinion pursuant to Rule 220(b), SCACR. State v. Moultrie, 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019).

Petitioner filed a timely *pro se* application for post-conviction relief (PCR). After retaining counsel, he filed two amended applications for PCR. (App. 351-397). Petitioner proceeded to an evidentiary hearing before the Honorable William H. Seals, Jr. on June 23, 2021, who ultimately denied and dismissed the application with prejudice by order dated July 31, 2021. (App. 467-490). Petitioner did not appeal, but after a hearing before the Honorable Kristi R. Curtis, was granted a belated appeal on September 22, 2022, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (App. 505-510).

The Court of Appeals granted certiorari with respect to the issue raised in this brief on May 7, 2024. A timely-filed petitioner's brief was filed followed by a timely-filed respondent's brief. The Court of Appeals filed its opinion affirming the denial of relief on October 15, 2025. A petition for rehearing was filed on October 24, 2025. The Court of Appeals denied the Petition for Rehearing on November 13, 2025. A timely Petition for Writ of Certiorari was filed on December 10, 2025. This return follows.

## RELEVANT FACTS

On January 20, 2015, the victim, Joyce Messinger, was working as an assistant manager at Shoe Show in Georgetown when Petitioner entered the store shortly after opening. (App. 119). Petitioner was wearing a blue jumpsuit, blue cap, and round rimmed glasses. (App. 125). Petitioner approached Messinger asking if she could check if the store had a size 13 shoe. (App. 119). There was no size 13 in the shoe requested, so Messinger grabbed the phone to call the nearby Conway store to see if they had the shoes in stock. (App. 119). When she turned around, Petitioner grabbed her neck and told her to open the safe, saying he used to work there and knew they had one. (App. 120). When she informed him there was no safe, Petitioner told her to empty the registers and hand him the money, while he continued to hold the knife against her neck. (App. 120). Petitioner sat Messinger on a bench in front of the employee door told her not to look at him and left. (App. 120). After checking that Petitioner had left the scene, Messinger walked slowly to the front of the store, locked the doors, and called 911. (App. 121). Messinger identified Petitioner in a photo lineup about 10 days later. (App. 127). Messinger testified at trial she did not feel free to leave while Applicant had a knife and a grip on her. (App. 122-123). Petitioner was arrested and charged with armed robbery and kidnapping.

Ronald Walker, Asset Protection Associate at Walmart, was called to testify. (App. 135). A video from January 20, 2015, was admitted into evidence showing a vehicle entering the Walmart parking lot<sup>1</sup>, stopping in a spot, parking for twenty to thirty minutes before someone exited and walked into Shoe Show and then exiting the store minutes later and driving away. (App. 138). Beyond depicting the individual in the video walking with a limp, the video quality was too

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<sup>1</sup> The Walmart is in the same shopping center as the shoe store and therefore showed the parking lot of the shoe store as well.

poor to tell exactly who the individual was. (App. 138). Sergeant Jason Ward from Georgetown Police Department testified they were able to get a tag on the car from the surveillance video and photos and the vehicle was registered to Stanley Moultrie, Petitioner. (App. 156).

Officers obtained a search warrant for Petitioner's residence and found a car matching the tag and description in the video, size 13 shoes, glasses, and a blue jumpsuit. (App. 160-161). The State also offered cell phone records indicating that Petitioner was in the vicinity of the Shoe Show during the time of the robbery. (App. 211). The jury found Petitioner guilty of armed robbery, but acquitted him of the kidnapping charge.

During the State's closing argument the solicitor stated:

The first thing y'all heard in this case was testimony from Ms. Joyce Messinger. That was the clerk there at the Shoe show. One of the things that the Judge is gonna tell you when he's doing his charge is that you, you all are the ones that determine the credibility in Ms. Messinger. Some of the things you're gonna look at are her demeanor on the stand; how was she; did she act like she was hiding something or was she being straightforward with you; what was her emotional state, was she disconnected, was she acting, was she playing a part? What she showed on that stand was pure and genuine in every aspect in every way it could possibly be. This is not acting; she is about as real as it gets. The emotion you saw from that stand is genuine.

(App. 228-229). He went on to further say "I tell you right now that Ms. Messinger's testimony is by itself, if you find it credible---which in my opinion she was and for the reasons I've stated and y'all saw her up there---if you find her credible that testimony is enough by itself to support a conviction in this case." (App. 232). Counsel for petitioner did not object. However, in his closing argument he pointed out that she "said basically three separate stories....It's those types of things that case a shadow on some of her credibility, not that she was lying, nothing like that, it's just the story didn't add up...she admitted that there were inconsistencies." (App. 239-240).

## 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, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Id. at 179, 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); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief 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 properly affirmed the PCR court's ruling that trial counsel was not ineffective for failing to object to the prosecutor's alleged vouching for the victim's credibility.**

Petitioner contends that the Court of Appeals erred in upholding the PCR court's opinion that affirmed the finding that found trial counsel did not render ineffective assistance of counsel when he failed to object to the solicitor's vouching for the veracity of the key State's witness and that Petitioner was not prejudiced by his counsel's substandard performance.

"It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." United States v. Francisco, 35 F.3d 116, 120 (4th Cir. 1994); see also State v. New, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony."). A prosecutor should "prosecute with earnestness and vigor" and "may strike hard blows, [but] is not at liberty to strike foul ones." Berger v. United States, 295 U.S. 78, 88 (1935). "If a Solicitor's closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs." New, 338 S.C. at 319, 526 S.E.2d at 240. "On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury's passions or prejudice." Id. "[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none." Berger at 88.

"Improper comments do not automatically require reversal if they are not prejudicial to the defendant." Id., 428 S.C. at 550, 837 S.E.2d at 40 (quoting Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor's

argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. Id.

In its ruling, the Court of Appeals held that this case turned on the prejudice analysis required by Strickland's second prong citing Hillerby v. State, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2020) (“We do not have to examine both deficiency and prejudice in every case.”); Strickland, 466 U.S. at 697 (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice,...that course should be followed.”). “Improper comments do not require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). The Court further held citing again to Randall v. State “that an appellate court must determine whether the improper argument ‘so infected the trial with unfairness as to make the resulting conviction a denial of due process.’” The Court stated that it making the determination it would review the improper argument in the context of the entire record.

Here, nothing the solicitor stated rose beyond the level of fair inferences drawn from her testimony. Though the solicitor stated that the victim’s emotions on the stand were genuine, he made clear it was the jury’s decision concerning the veracity of her statements and her credibility as a witness and to use the testimony, in conjunction with other evidence presented, when determining whether Petitioner was guilty. (App. 228-235). Though the solicitor stated he personally found her credible, he acknowledged it was the jury’s determination to make and made it clear that it was none other than a personal opinion. The statements did not appeal to personal biases of the jury, inflame their passions, or make improper insinuations, suggestions, or make assertions of personal knowledge. Further, Counsel for Petitioner pointed out the inconsistencies

in her three stories and also talked about how that affected her credibility. Accordingly, the statements made were not improper and, therefore, Counsel was not ineffective for failure to object to the statements.

Further, even if the statements were improper, Petitioner was not prejudiced. Ordinarily, the existence of overwhelming evidence does not automatically preclude a finding of prejudice, as an element of ineffective assistance of counsel claim. Smalls v. State, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). “For the evidence to be overwhelming such that it categorically precludes a finding of prejudice...the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the Strickland standard of ‘a reasonable probability... the factfinder would have had a reasonable doubt’ can be met.” Id. at 191, 810 S.E.2d 836 at 845. Here, Victim gave a statement to what Petitioner was wearing and those clothes were found at Petitioner’s home, Petitioner was identified in a lineup, Petitioner’s car was seen on surveillance video in the parking lot where the incident occurred as well as Petitioner’s cell phone records placed him in the vicinity of the incident. As stated above, the statements made were not improper and the evidence against Petitioner in the case was overwhelming and, thus, any improper statements made were not prejudicial to Petitioner. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). See also Darden v. Wainwright, 477 U.S. 168, 181 (1986) (holding that the relevant question is not whether the prosecutors’ comments were improper but whether they “so infected the trial with unfairness as to make the resulting conviction a denial of due process.”). Consequently, Counsel was not ineffective because, even if this Court found Counsel deficient, Petitioner was not prejudiced by the deficiency.

In its prejudice determination, the Court of Appeals held that Petitioner was not prejudiced by trial counsel's failure to object to the solicitor's statements. The Court stated:

The State presented several pieces of evidence in addition to Victim's testimony tending to show Petitioner's guilt, including; surveillance video placing a car registered to Petitioner at the crime scene around the time of the crime, surveillance video showing a man exiting that car and entering the store, clothing and glasses found at Petitioner's home matching those worn by the assailant, multiple pairs of size thirteen shoes in Petitioner's closet; and cell phone location data placing Petitioner in the area of the store around the time the crime occurred. The car seen on the surveillance video was also found at Petitioner's home.

The State also introduced Victim's identification of Petitioner in a photographic lineup. Since the identification took place over a year prior to trial, it was not tainted by any improper bolstering of Victim's trial testimony by the solicitor. Additionally, any prejudice Petitioner may have suffered from the improper vouching was further lessened by the solicitor's statement to the jury they "[were] the ones that determine the credibility in [Victim]", as well as the trial court's instructions that arguments of counsel are not evidence and that it was the jury's duty alone to decide the credibility of the witnesses. Moreover, the kidnapping acquittal shows that the jury properly exercised its discretion to believe portions of Victim's testimony or the State's evidence but to reject others. Thus, the solicitor's statements could not have "so infected the trial with unfairness as to make the resulting conviction a denial of due process."

Stanley Moultrie v. State, Unpublished Opinion No. 2025-UP-247 (filed October 15, 2025). The Court of Appeals reviewed the improper argument in the context of the entire trial and properly held that Petitioner was not prejudiced by trial counsel's failure to object to the solicitor's statements. Therefore, the Petition for a Writ of Certiorari should be denied.

**CONCLUSION**

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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