

RECEIVED

Apr 21 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Certiorari to Laurens County  
Honorable J. Mark Hayes, Circuit Court Judge  
Appellate Case No. 2022-001223

---

MAURICE ANTHONY ODOM,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

---

**RESPONDENT'S PETITION FOR REHEARING**

---

On March 11, 2026, this Court issued an opinion reversing the denial of Petitioner's application for post-conviction relief ("PCR"). *Odom v. State*, Op. No. 2026-UP-119 (S.C. Ct. App. filed Mar. 11, 2026). Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent the State of South Carolina respectfully petitions for rehearing because this Court appears to have overlooked and misconstrued several important points in holding that the PCR court erred.

**1. The PCR court correctly found Petitioner failed to show prejudice**

This Court found Petitioner presented sufficient evidence at the PCR hearing to show that he was prejudiced by Counsel's advice not to testify. Specifically, this Court found the "proffer" of Petitioner's and Counsel's testimony at the PCR hearing "adequately explained the content of [Petitioner's] proposed trial testimony, and [Petitioner's] testimony would have refuted Mixon's testimony had the jury found him more credible than Mixon."

A PCR applicant cannot prove he was prejudiced by not being able to present testimony during his trial unless he offers that testimony at the PCR hearing. *Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). This requirement is universally acknowledged, and an overwhelming consensus of federal and state courts have held that it applies to the proposed testimony of the PCR applicant himself, just like that of any other witness. *See, e.g., Palmer v. Hendricks*, 592 F.3d 386, 394–95 (3d Cir. 2010) (holding Palmer failed to make an adequate showing of prejudice where he failed to set forth the content of his proposed testimony); *Hines v. United States*, 282 F.3d 1002, 1004 (8th Cir. 2002) (holding Hines failed to prove prejudice where he “produced no evidence indicating what his testimony would have been” or how it might have affected the outcome of his trial); *Isaac v. State*, 319 Ga. 25, 31, 901 S.E.2d 535, 541 (2024) (“We conclude that Isaac failed to show *Strickland* prejudice. To begin, Isaac was never asked at the motion for new trial hearing what he would have specifically testified had he gotten on the stand.”); *Walden v. State*, 2016 Ark. 306, 7, 498 S.W.3d 725, 731 (2016) (“To establish prejudice, the defendant must state specifically what his testimony would have been.”); *Rushing v. State*, 711 So. 2d 450, 456–58 (Miss. 1998) (holding Rushing failed to prove prejudice under *Strickland* where she failed to present “substantial and detailed evidence” of what she would have testified) (quoting *Heidelberg v. State*, 584 So.2d 393, 395 (Miss.1991)); *State v. Arguelles*, 921 P.2d 439, 441 (Utah 1996) (holding Arguelles failed to meet his burden of proving prejudice, where he failed to show “what his testimony would have been if he had testified”).

This requirement exists because, in order for the PCR court to accurately evaluate the impact of the applicant’s omitted testimony on the result of his trial, the court must be enabled to assess the relevancy and credibility of that testimony. *See id.* (“Arguelles urges this court to assess

the probable impact of testimony without placing before us the substance of that testimony. This invitation to speculate cannot substitute for proof of prejudice.”); *Wright v. State*, 446 S.C. 475, 496, 920 S.E.2d 17, 28 (Ct. App. 2025) (holding a PCR applicant must demonstrate prejudice from counsel’s failure to call him to testify, for “a court cannot fairly evaluate prejudice without knowing the precise nature of the defendant's testimony”); *c.f. Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) (holding mere speculation as to what testimony would have been presented at trial cannot satisfy the applicant’s burden of showing prejudice).

In order to prove prejudice from Counsel’s misadvice regarding the right to testify, Petitioner was required to present to the PCR court *what his testimony would have been if he had taken the stand*. However—contrary to this Court’s statement in its order reversing the decision of the PCR court—there was never any “proffer” of such testimony, either at trial or at the PCR hearing. The limited evidence of Petitioner’s claim that Mixon had taken Petitioner’s car and used it to commit the burglary was presented only to explain Counsel’s theory of the case, her reasons for cross-examining Mixon about his alleged gang affiliation, and her decision not to challenge the State’s evidence that Petitioner owned the car used in the crime. (App.p.529, lines 3–8; p.538, lines 6–17; p.574, line 25–p.577, line 6). Neither Petitioner nor Counsel ever asserted that Petitioner would have presented that same story if he had testified at trial.

In fact, Petitioner’s claim that Mixon had taken his car was only ever mentioned on cross-examination of Counsel and Petitioner by Respondent; Petitioner did not even attempt to elicit the story on direct examination. *C.f. Isaac*, 319 Ga. at 31, 901 S.E.2d at 541 (holding defendant failed to prove prejudice, where he was never specifically asked what he would have testified to had he taken the stand at trial). On the contrary, Petitioner’s PCR counsel *objected* when Respondent attempted to cross-examine Petitioner about his story. (App.p.575, lines 3–15). Petitioner’s

counsel complained that Respondent was “getting into something through the backdoor,” and he argued that Petitioner’s story about the car was “totally irrelevant” because it had nothing to do with the allegation that Counsel was ineffective for not challenging the State’s introduction of DMV records. (App.p.575, line 9–p.576, line 13). The PCR court agreed with Petitioner’s counsel, and neither party asked Petitioner any more questions. (App.p.577, lines 2–8).

Unsurprisingly, given that Petitioner’s own PCR counsel had cut short his client’s testimony on the ground it was “totally irrelevant,” the PCR court ultimately found that Petitioner had not met his burden of proving prejudice from Counsel’s advice not to testify at trial. Specifically, the PCR court found Petitioner “failed to provide information regarding what his testimony would have been at trial” or how it might have “changed the outcome of his case with reasonable probability.” (App.pp.660–61).

Notably, after the PCR court made this finding, Petitioner filed a lengthy motion for reconsideration. (App.pp.662–71). Nowhere in that motion, however, did he challenge the PCR court’s prejudice finding by arguing that the substance of his omitted trial testimony was adequately presented at the PCR hearing. Nor did he argue, as he now does on appeal, that the content of his proposed testimony could be inferred from the incidental discussion of Petitioner’s borrowed-car theory, in response to cross-examination on concededly unrelated issues. Rather, in his motion for reconsideration, Petitioner merely stated that he “wanted to testify,” that he had “every incentive to tell his story to the jury,” and that the PCR court had “no reason to believe that the Petitioner would have confessed his guilt during his testimony.” (App.pp.670–71). Although Petitioner claimed he wanted to “tell his story,” he did not take the opportunity to articulate what his story would have been. *See Walden*, 2016 Ark. 306 at 7, 498 S.W.3d at 731 (“Here, there was little showing of what Walden’s testimony would have been had he testified beyond vague

statements that Walden would have given the jury the whole story of the incident. He clearly made no showing of prejudice . . . .”); *Arguelles*, 921 P.2d at 441 (General and conclusory statements in defendant’s brief that he “was the lone witness who could definitively explain what he was doing before, during, and after the time in question” did not suffice to prove prejudice, absent a proffer of what his testimony would have been.).

The PCR court convened a hearing on Petitioner’s motion for reconsideration. (App.pp.674–709). Even at that hearing, Petitioner never made the argument he now presents on appeal. Instead, Petitioner merely argued he would have denied the charges: “the Attorney General is complaining about we don't know what my client's testimony would have been. I am just thinking, are you kidding. Three words, I didn't do it. That was what the testimony was going to be.” (App.p.707, lines 16–20). In fact, Petitioner openly invited the PCR court to speculate on what Petitioner’s testimony would have been: “I didn't do it and then you can extrapolate from that. This guy is making this stuff up about me, whatever reason. But, again, it all boils down to I didn't do it.” (App.p.707, lines 22–24). The PCR denied Petitioner’s motion for reconsideration, again noting that any prejudice resulting from Petitioner’s failure to testify was purely speculative because Petitioner did not present any of the testimony he would have given at trial or show that it would likely have led to a different result. (App.pp.723–24).

Having repeatedly failed to persuade the PCR court, Petitioner sought review in this Court, presenting—for the first time—his argument that the content of his omitted trial testimony could be sufficiently inferred from a few snippets of the PCR testimony concerning the borrowed-car theory. (Pet.Br.pp.18–19). Suddenly, the testimony about Petitioner’s car—which Petitioner never even tried to elicit at the PCR hearing, previously argued was “totally irrelevant,” and neglected to even mention in his motion for reconsideration and subsequent hearing—became the

foundation of Petitioner's prejudice argument on appeal.

An appellant may not argue one ground or theory in support of an issue during the circuit court proceedings and then adopt a different ground or theory in support of the issue on appeal. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (holding a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); *State v. Thomason*, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) (“[A] party cannot argue one theory at trial and a different theory on appeal.”). That is exactly what Petitioner has done in this case.

By adopting Petitioner's unpreserved position on this issue, this Court has effectively reversed the PCR court's decision based on an argument the PCR court never had the opportunity to address. *See Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) (The purpose of issue preservation requirements is “to give the [circuit] court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.”); *see also State v. Stone*, 376 S.C. 32, 36, 655 S.E.2d 487, 488–89 (2007) (“If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.”).

Furthermore, this argument is flawed on the merits. The PCR hearing testimony to which this Court's order refers—that Petitioner told Counsel his theory that Mixon could have borrowed his car without his knowledge to commit the burglary—was presented only in the context of explaining Counsel's theory of the case, her reasons for cross-examining Mixon about his alleged gang affiliation, and her decision not to challenge the State's evidence that Petitioner owned the car used in the crime. (App.p.529, lines 3–8; p.538, lines 6–17; p.574, line 25–p.577, line 6). That Counsel's strategic decisions were based on her client's account of the facts, which he revealed

during their private discussions in preparation for trial, does not imply that her client intended to present that same account on the witness stand at trial. It certainly does not constitute a “proffer” of what Petitioner’s trial testimony would have been.

Nevertheless, even if Petitioner had specifically explained what his testimony would have been at trial, the prejudice analysis would not end there. Petitioner would still have had the burden of proving a “reasonable probability” that his testimony would have changed the result of his trial. *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, . . . and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding.

*Strickland v. Washington*, 466 U.S. 668, 693 (1984). Accordingly, “[t]he likelihood of a different result must be substantial, not just conceivable,” in order to meet the standard for prejudice. *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

Despite citing *Strickland* at the outset of its opinion, this Court did not perform the appropriate prejudice analysis. The Court’s order simply states that the State’s case hinged on Mixon’s testimony and that Petitioner’s version of the facts “would have refuted Mixon’s testimony had the jury found him more credible than Mixon.” However, the Court did not even attempt to evaluate whether a jury *would* have found Petitioner more credible than Mixon. The relevant question is not whether a jury *conceivably* might have believed Petitioner’s story over Mixon’s, but whether the jury was *substantially likely* to do so. *Id.*

The Court appears to base its perfunctory analysis on citations to *State v. Black*, 400 S.C. 10, 31, 732 S.E.2d 880, 892 (2012) (Pleicones, J., dissenting), and *State v. Stukes*, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016). Neither of these cases concern ineffective assistance of counsel,

nor do they purport to apply the *Strickland* standard for evaluating prejudice. Rather, both cases concerned whether trial court errors were “harmless beyond a reasonable doubt.” *See Black*, 400 S.C. at 27, 732 S.E.2d at 890 (“Having found the admission of the remote manslaughter convictions was error, this Court must next consider whether their admission was, nevertheless, harmless beyond a reasonable doubt.”); *Stukes*, 416 S.C. at 500, 787 S.E.2d at 483 (“We . . . cannot say the error in this case was harmless beyond a reasonable doubt.”).

The “harmless error” analysis is far more favorable to the defendant than the prejudice analysis for ineffective assistance of counsel claims. A reviewing court cannot pronounce an error “harmless” unless it can conclude, beyond a reasonable doubt, that the error did not contribute to the verdict. *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002). In other words, a court applying the “harmless error” standard *must* find prejudice, unless it is convinced beyond a reasonable doubt that the error *did not* contribute to the verdict. A court applying the ineffective assistance of counsel standard, on the other hand, *must not* find prejudice unless it is convinced of a reasonable probability that the error *did* result in a different verdict. *Strickland*, 466 U.S. at 696 (holding “a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.”). This Court’s citations to *Stukes* and to Justice Pleicones’ dissent in *Black* present the troubling implication that the Court reversed the PCR court’s decision and vacated Petitioner’s conviction on the basis of a totally inappropriate legal analysis.

Applying the correct analysis to the present case requires the Court to examine the probable result of the jury’s assessment of Petitioner’s and Mixon’s relative credibility. This Court does not appear to have made such an examination. Of course, any attempt to evaluate the relative credibility of Petitioner and Mixon has been substantially hampered by Petitioner’s failure to create

an adequate record of what his trial testimony would have been. Petitioner briefly mentioned the borrowed-car story only one time during his testimony at the PCR hearing, and the State's attempt to cross-examine him on the details of that story was immediately shut down by Petitioner's PCR counsel. (App.p.575, lines 3–15). The only other testimony about Petitioner's story consisted of two similarly brief references made by Counsel, who made no attempt to opine on the story's credibility but simply mentioned the story as one of the factors she took into account in preparing for Petitioner's trial. (App.p.529, lines 3–8; p.537, line 21–p.538, line 17).

No PCR court, faced with this paltry record, could seriously claim to find that Petitioner had satisfied his burden of proving, not only what the content of his trial testimony would have been, but that there was a "reasonable probability" a jury would have credited Petitioner's account over Mixon's. The PCR court correctly characterized this claim of prejudice as "highly speculative" and properly found that Petitioner had not met his burden of proof. (App.pp.660–61).

However, even if Petitioner's bare-bones and cursory story had been adequately presented to the PCR court, he still would have failed to prove that a jury was substantially likely to have believed him over Mixon. Mixon, for one, had no apparent motive to lie. In his trial testimony, Mixon *admitted* his own involvement in the burglary. In fact, Mixon's confession was the *only* evidence tying him to the burglary; law enforcement did not even consider him a suspect until, after he was arrested on unrelated charges in Barnwell County, he gave a statement confessing to the Laurens County burglary. (App.p.292, line 15–p.293, line 2). Petitioner has offered no explanation for his baffling claim that Mixon *truthfully* confessed his own role in the crime but *falsely* implicated Petitioner as his co-conspirator. Mixon's motive for purportedly framing Petitioner as his co-conspirator remains a mystery.

Petitioner's motive to lie, on the other hand, is obvious. For his testimony to be of any benefit to him, Petitioner had to come up with some innocent explanation for the undisputed fact that the burglars used his car to commit the crime. To that end, Petitioner now claims he was in the inexplicable habit of leaving his car unlocked, with the keys inside, so that Mixon could have used it to commit the crime without Petitioner's knowledge. This transparently self-serving story is implausible on its face. Any reasonable jury would have seen this story for what it was: an ad-hoc attempt to explain away the inconvenient fact that Petitioner's car was undoubtedly the car used by the burglars.

In conclusion, the PCR court correctly found Petitioner had failed to adequately present his proposed trial testimony as required to prove prejudice under *Strickland*. On that ground alone, the PCR court's decision on this issue should have been affirmed. However, even if Petitioner's scanty and incidental references to the borrowed-car story could be deemed an adequate record of his proposed trial testimony, it is far from "reasonably likely" that a jury would have credited Petitioner's vague, self-serving, and implausible account over Mixon's detailed and self-inculpatory testimony. For all these reasons, Respondent respectfully asks that this Court grant the petition for rehearing and reconsider its finding of prejudice on this issue.

## **2. The PCR court correctly found the solicitor's comments were not improper**

Next, this Court held the PCR erred in finding that Counsel was not ineffective for failing to object to certain comments by the solicitor at trial. First, the Court holds that the solicitor improperly commented on Petitioner's failure to testify when, on two occasions, he referred to Mixon's testimony as "uncontradicted."

Our Supreme Court has expressly held that such remarks by a solicitor do not constitute improper comments on a defendant's exercise of the right to remain silent. *See State v. Stroman*,

281 S.C. 508, 513–14, 316 S.E.2d 395, 399 (1984) (holding solicitor did not improperly comment on the defendant’s silence by alluding to the fact the defendant “had not attempted to contradict [the] evidence” identifying his fingerprint found at the crime scene), *overruled on other grounds by State v. Davis-Kocsis*, 443 S.C. 127, 903 S.E.2d 491 (2024).

As a general rule, “it is not improper for the prosecuting attorney to remark that testimony for the prosecution is unexplained or uncontradicted.” 23A C.J.S. *Criminal Procedure and Rights of the Accused* § 1762. “[A] bare statement that the prosecution's evidence, or some designated part of it, is uncontradicted, does not per se involve an impermissible reference to the defendant's failure to testify.” *Comment or Argument by Court or Counsel that Prosecution Evidence is Uncontradicted as Amounting to Improper Reference to Accused’s Failure to Testify*, 14 A.L.R.3d 723.

However, as an exception to this general rule, it has been held that a prosecutor’s characterization of certain evidence as “uncontradicted” may be improper if that evidence “is such that only the defendant himself could or would contradict it.” *Id.*; accord *State v. Robinson*, 238 S.C. 140, 157–59, 119 S.E.2d 671, 680 (1961) (holding solicitor’s references to testimony as not “contradicted,” “disputed,” or “denied,” were proper, where the defendant’s testimony was not the only available evidence that could have contradicted it), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *State v. Sweet*, 342 S.C. 342, 348, 536 S.E.2d 91, 94 (Ct. App. 2000) (“Where the solicitor refers to certain evidence as uncontradicted *and the defendant is the only person who could contradict that particular evidence*, the statement is viewed as a comment on the defendant's failure to testify.”) (emphasis added).

This Court cited *Sweet* for its conclusion that the solicitor’s description of Mixon’s testimony as “uncontradicted” was improper. However, *Sweet* expressly states that such

comments only cross the line into impropriety where “the defendant is the only person who could contradict that particular evidence.” *Id.* The Court’s opinion does not address this important qualifier.

In *Sweet*, the solicitor explicitly argued to the jury that *only* the defendant could rebut the testimony of the State’s witnesses. *Id.* (“[T]he assistant solicitor stated only Sweet could rebut Verba and Holliday’s testimony. Specifically, he told the jury ‘nobody else knows what happened that night except Tony Sweet . . . .’”). In the context of that remark, the assistant solicitor’s subsequent statement that there “isn’t any testimony that conflicts” with the State’s witnesses “[c]learly . . . referenced Sweet’s failure to testify and was not merely a comment on the evidence.” *Id.*

The present case is materially distinguishable from *Sweet*. In this case, the solicitor never claimed that *only* Petitioner could rebut Mixon’s testimony. On the contrary, the solicitor extensively drew the jury’s attention to the police officers’ testimony and the photographs, surveillance videos, and evidence recovered from the crime scene to argue that Mixon’s testimony was not contradicted by any of the State’s other evidence:

Christopher Mixon said their whole plan was to go in there and steal cigarettes and you can see in the pictures that they had swept large quantities, dozens of cartons of cigarettes, into those trash bags to take them out of there.

. . .

[T]here was only one car nearby and that was in the eastbound lane going down I-26 towards Columbia, right there where that green sticker is, where Christopher Mixon said they parked before they walked back and broke into the store.

. . .

So what does Mr. Mixon say about the break-in? He says that they had a rock. State’s Exhibit 32. . . . So he used it twice. Once to shatter the outside window and gain access, once to use it here to get back into the office. And that’s where they left it. Back in the office. There’s the rock itself, right there.

. . .

Mr. Mixon said that he ran across the road, made his way down through the woods behind the DOT building, . . . until he finally came out on I-26 and then went across the street to the car; . . . Mr. Mixon talked about the police being around the car. How would he know that unless he was there?

(App.p.329, lines 6–10; p.336, lines 13–17; p.336, line 21–p.337, line 10; p.337, line 12–p.338, line 5).

Similarly, it was not improper for the Solicitor to point out that there was no evidence for any scenario, other than the one presented by Mixon. In her opening statement to the jury, Counsel acknowledged that the burglary happened but denied that Petitioner was involved: “Mr. Mixon said it happened with Mr. Odom. We say it did not. That’s what this case comes down to.” (App.p.74, lines 2–4). Counsel’s questioning of Mixon was part of her overall strategy to discredit Mixon’s testimony that Petitioner was involved in the planning and execution of the burglary. (App.p.173, line 13–p.185, line 5). The solicitor’s challenged comment referring to the lack of “contradictory evidence” or “alternative scenarios” occurred in the context of criticizing the weakness of Counsel’s *cross-examination* of Mixon, wherein she unsuccessfully attempted to trip him up with questions about his supposed gang affiliations and his prior statement to police:

Now you heard from Tyrone Goggins that Mr. Mixon made a statement to law enforcement back on November 18th of 2011. Mixon apparently said on—well, he said on the witness stand he didn't remember making the statement. The defense has access to it. Don't you think if there had been some gross inconsistency with what he said back then and what he testified to in court we would have heard about it?

. . .

So instead of being questioned about the events that happened inside the store, about how the burglary took place, about whether or not it was somebody else, not Maurice Anthony Odom, what we heard about with Mr. Mixon were tattoos, whether he was in a gang. Do you remember Ms. Wiygul asked him if he was in a gang called Boss, but as it turned out the only Boss we heard about was the fact that Boss was Maurice Anthony Odom's nickname. But there was never any contradictory evidence proposed, no alternative scenario,

no alternative individuals to the crimes that were shown in this DVD and in the photographs that we submitted. No other scenario than the one proposed by Christopher Mixon from this witness stand. No other individual did he testify to except Maurice Anthony Odom as being his co-defendant, his partner in crime.

(App.p.333, line 19–p.334, line 25). The solicitor was entitled to point out that Petitioner’s cross-examination of Mixon had failed to expose any inconsistencies in Mixon’s story or contradictions between Mixon’s testimony and his earlier statement. Doing so was not a comment, directly or indirectly, on Petitioner’s failure to testify.

The PCR court found that, “[i]n this case, the solicitor did not directly mention Applicant’s failure to testify or claim that only Applicant could contradict Mixon’s testimony.” Therefore, the PCR court correctly found the Solicitor’s statements were not improper and, consequently, Counsel was not ineffective for failing to object to them.

Finally, this Court held that the solicitor vouched for Mixon in his opening statement when he stated the jury would “find [Mixon,] in spite of his criminal record[,] to be a credible witness.” (App.p.73, lines 10–14). The Court’s perfunctory discussion of this issue does not even attempt to explain how this comment constituted impermissible vouching.

“A prosecutor arguing forcefully during closing argument that the jury should believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial.” *State v. Busse*, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023). “Unlike an expert witness on direct examination, a prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, as previously explained, doing so is one of the fundamental responsibilities of a lawyer.” *Id.* at 111, 886 S.E.2d at 212. Here, the solicitor did no more than argue that the State’s key witness was credible.

Immediately before the solicitor made this challenged remark, he acknowledged that

“Christopher Mixon has been convicted of several burglaries. You will hear about those. He is a convicted felon.” (App.p.73, lines 8–10). In context, this argument was not vouching; the solicitor went on to question Mixon and elicit from him that he was not testifying in exchange for dismissal of any charges. (App.pp.186–87). The solicitor’s argument—that Mixon was credible because he was not motivated to testify by the hope of obtaining leniency for his pending charges—was based on a permissible inference from the record, not on personal assurances or on evidence not presented to the jury. Therefore, it was not vouching.

Moreover, far from “invading the province of the jury,” the solicitor, in his closing argument, reminded the jurors that it was their job to decide whether Mixon was credible or not: “Should you believe him? That’s the question you’re going to have to ask. . . . All I’m asking you to do is consider whether or not his testimony is worthy of your belief.” (App.p.333, lines 6–10).

The PCR court correctly determined that the solicitor did not vouch for Mixon. This Court reversed the PCR court’s determination of this issue without even a cursory examination of the challenged comments in light of the law of vouching. For these reasons, the State respectfully asks that this Court grant the petition for rehearing.

Respectfully submitted,

ALAN WILSON  
Attorney General

D. RUSSELL BARLOW  
Senior Assistant Deputy Attorney General

ZACHARY W. JONES  
Assistant Attorney General

By: \_\_\_\_\_

Zachary W. Jones  
S.C. Bar Number 104174

April 21, 2026

**RECEIVED**

**Apr 21 2026**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Certiorari to Laurens County  
The Honorable J. Mark Hayes, Circuit Court Judge  
Appellate Case No. 2022-001223

---

MAURICE ANTHONY ODOM,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

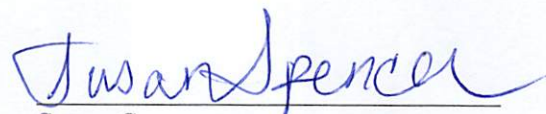
---

**PROOF OF SERVICE**

---

I, Susan Spencer, Legal Assistant, hereby certify that I have served the within Petition for Rehearing, dated April 21, 2026, on Petitioner by sending an electronic copy via email to Jessica M. Saxon, Esquire, counsel of record for Petitioner, at the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 21<sup>st</sup> day of April, 2026.



Susan Spencer  
Legal Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3727