

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Pickens County

Honorable B. Alex Hyman, Circuit Court Judge  
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JOSE R. REYES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002118  
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PETITION FOR WRIT OF CERTIORARI  
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**Jun 05 2026**

S.C. SUPREME COURT

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**ISSUE PRESENTED**

Did the post-conviction court err finding defense counsel was not ineffective for failure to object to improper testimony that bolstered minor's credibility where the testifying witness was minor's counselor and was qualified as an expert in child abuse counseling?

## STATEMENT

On March 17, 2015, a Pickens County grand jury indicted petitioner for criminal sexual conduct (CSC) with a minor, first degree. App. 291-292. On December 12, 2016, petitioner's case was called to trial before the Honorable Perry H. Gravely, and a jury. App. 1-208. Richard Warder represented petitioner. App. 1. Brandi Hinton prosecuted for the state. App. 1. At the conclusion of trial, the jury found petitioner guilty as indicted. App. 204, ll. 13-19. Judge Gravely sentenced petitioner to twenty-eight years' imprisonment. App. 207, ll. 18-19.

On direct appellate counsel raised one issue, that the trial court erred finding the minor victim competent to testify in the presence of the jury. The Court of Appeals affirmed petitioner's conviction in an unpublished opinion. *State v. Reyes*, Op. No. 2019-UP-214 (S.C. Ct. App. filed June 12, 2019). The Supreme Court granted certiorari and affirmed in a published opinion. *State v. Reyes*, 432 S.C. 394, 853 S.E.2d 334 (2020).

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 209-215. An evidentiary hearing was held on May 13, 2024, before the Honorable B. Alex Hyman. App. 228-280. Sarah Henry represented petitioner. App. 228. Joshua Edwards appeared for the state. App. 228.

On September 15, 2025, Judge Hyman signed an order denying PCR. App. 281-290. The PCR court found defense counsel was not ineffective for failure to object to the testimony of Victoria Tate. App. 285. The court found Tate's testimony was not objectionable hearsay where it was only time and place and permissible behavioral evidence. App. 285. The court further found the objection would not have been successful because the testimony was highly probative to show the circumstances of the minor's disclosure. The court found there was not a reasonable probability of a different outcome had defense counsel objected to Tate's testimony on the basis

of bolstering. App. 286.

This petition follows.

## ARGUMENT

The post-conviction court erred finding defense counsel was not ineffective for failure to object to improper testimony that bolstered minor's credibility where the testifying witness was minor's counselor and was qualified as an expert in child abuse counseling.

### **Relevant facts**

In August 2013, minor disclosed to her mother that petitioner sexually abused her on more than one occasion. App. 67, l. 3—69, l. 21. Petitioner was indicted for conduct alleged to have occurred between January and June 2013, when minor was six years old. App. 291-292.

At trial, minor testified that while spending the night with her cousin, petitioner sexually abused her. App. 49-55. There was no direct physical evidence of the alleged conduct, but the state presented evidence that minor and petitioner tested positive for herpes simplex virus type 1. App. 98, l. 16—99, l. 7; 123, l. 17—124, l. 1.

The state called Victoria Tate, minor's counselor, to testify. App. 80-84. Tate was qualified as an expert in "child abuse counseling." App. 81, l. 22—82, l. 3. Tate testified she had been counseling minor since March 10, 2016, and was still seeing minor as a patient. App. 82, l. 18-25. Tate testified minor told her she was sexually abused while staying with her older cousin. App. 83, ll. 1-7.

On direct examination the following testimony was elicited:

Q: Okay. Can you please tell me some of the observations that you have made throughout your sessions with minor?

A: Yes. Minor appears embarrassed. She appears ashamed. She blames herself for what happened. She's very anxious. She, at times, is aggressive. She also wants to avoid talking about things that have happened to her.

Q: Okay. When you say she's embarrassed and ashamed, is there anything in particular that she's embarrassed or ashamed about?

A: She's embarrassed and ashamed that she couldn't stop the abuse.

App. 83, ll. 8-20.

At petitioner's evidentiary hearing defense counsel testified regarding his representation of petitioner at trial. App. 237-266. Counsel stated that his theory of the case was to show that petitioner had not given minor herpes simplex 1 but that minor transmitted the virus from cold sores she had prior to the alleged conduct. App. 240, ll. 8-13. He acknowledged that both the minor and petitioner testified at trial. App. 240, l. 14—241, l. 11. His recollection was that petitioner denied the allegation of criminal sexual conduct against minor. App. 241, ll. 7-11. Counsel agreed credibility was "important" in petitioner's case. App. 241, ll. 12-14.

Counsel could not recall any of Victoria Tate's trial testimony. App. 241, l. 21—242, l. 1. He could not remember whether he was aware Tate was currently counseling minor at the time of trial. App. 243, l. 24—244, l. 1. When asked why he did not object to Tate, minor's current counselor, testifying in her capacity as a child abuse counselor, defense counsel said, "I don't particularly remember much about it." App. 245, ll. 12-24. Counsel testified it would be improper for an expert to testify as to their belief regarding the veracity of a minor's accusation of sexual abuse. App. 246, ll. 10-16. He stated, "I objected to what I found objectionable, and I didn't object to what I didn't find objectionable." App. 251, ll. 1-3.

PCR counsel argued that Tate's testimony was improper where she commented on the truthfulness of minor's accusation against petitioner because the credibility of the minor was the most critical determination in petitioner's case. App. 267, ll. 4-122. PCR counsel distinguished this case with *State v. Makins*,<sup>1</sup> because here the witness was also qualified as an expert and was still treating minor at the time of trial. App. 268, ll. 23-25.

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<sup>1</sup> 433 S.C. 494, 860 S.E.2d 666 (2021).

## Discussion

The PCR court erred finding defense counsel was not deficient for failing to object to Tate's improper vouching testimony. The purpose of Tate's testimony was to improperly bolster minor's testimony. Our Court of Appeals held that it is improper for a witness to bolster the testimony of other witnesses. *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); *see also Smith v. State*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (finding a "forensic interviewer's...opinion testimony improperly bolstered the victim's credibility").

In *McKerley*, the trial court allowed a witness to testify as an expert in "forensic interviewing and child abuse assessment." 397 S.C at 463, 725 S.E.2d at 141. The expert interviewed the alleged victim twice and concluded that both interviews were compelling for sexual abuse. She further determined the victim's statements were consistent with other information she had on the case. *Id.* at 466, 725 S.E.2d at 142. The Court determined there was no other way to interpret the language used in the expert's testimony other than to mean she believed the victim was being truthful. The Court further held, "In light of [the expert's] extensive inadmissible testimony bolstering the credibility of the victim ... we cannot say the erroneous admission of [the expert's] testimony did not contribute to the jury's decision," therefore finding harmful error. *Id.* at 467, 725 S.E.2d at 143.

This Court has also held that it is improper "for an expert to comment on the veracity of a child's accusations of sexual abuse." *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *see State v. Dawkins*, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989) (finding therapist indicating he believed victim's allegations were genuine was improper); *see also State v. Dempsey*, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App. 2000) (finding therapist's testimony children were being truthful in ninety-five percent of instances in which sexual abuse was alleged was

improper vouching for child).

In *Jennings*, the forensic interviewer, who was qualified as an expert, interviewed the three alleged victims of sexual abuse and issued a separate report for each child that was admitted into evidence. She concluded in her reports that each child provided a compelling disclosure of abuse by the defendant and that the children provided details that were consistent with the background information received from their mother, the police report, and the other children. 394 S.C. at 476-481, 716 S.E.2d at 92-95.

This Court held that conclusions in the reports improperly vouched for the children's veracity and, thus, the trial court abused its discretion by admitting the reports into evidence. It further held the error was not harmless because there was no physical evidence presented at trial and, therefore, the children's credibility was the sole issue in the case. *Id.* at 94- 95, 716 S.E.2d at 480.

In *Makins* this Court analyzed whether the trial court erred in denying a mistrial based on evidentiary rulings including allowing the minor's treating therapist to testify as an expert at trial. In this case the allegation is not that the expert should have been totally barred from testifying but that her testimony should have been limited. Here, Tate testified, without objection, as to her opinion regarding minor's behavior due to the alleged abuse.

The PCR court erred finding petitioner was not prejudiced due to defense counsel's failure to object to Tate's improper bolstering testimony. There was no direct physical evidence presented in this case. Instead, like many CSC cases, petitioner's case came down to the credibility of the minor. The state used Tate's testimony to indirectly comment on minor's credibility and provide greater weight to their testimony. Tate's testimony was likely interpreted by the jury to suggest it should believe minor because minor's behavior demonstrated she was

ashamed and embarrassed. Moreover, that jurors should believe minor's allegations because they disclosed sexual abuse to an expert in "child abuse counseling."

**CONCLUSION**

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

  
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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2026.