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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2026-UP-125
(S.C. Ct. App. Submitted February 3, 2026-Filed March 18, 2026)

Lower Court Case No. 2021-CP-42-03954

ANTHONY BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000551

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on May 20, 2026.

QUESTION PRESENTED

Whether the Court of Appeals erred finding no prejudice where the solicitor's improper Golden Rule argument during closing prejudiced petitioner by inviting the jury to decide the case based on emotion instead of the evidence?

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted petitioner for committing a lewd act upon a minor and criminal sexual conduct with a minor, first degree. App. 518-21. Petitioner's case was called to trial for the second time on March 25, 2019, before the Honorable R. Keith Kelly, and a jury.[1] Jeremy Thompson represented petitioner. Wendy Hallford and Hope Coleman, assistant solicitors, prosecuted for the state. App. 1

On March 27, 2019, the jury found petitioner guilty as indicted. App. 399, l. 23 – 400, l. 15. Judge Kelly sentenced petitioner to life imprisonment for criminal sexual conduct with a minor in the first degree, and fifteen years' imprisonment for committing a lewd act upon a minor. App. 406, ll. 10-16.

Appellate counsel, Robert Dudek, filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The Court of Appeals dismissed the appeal. *State v. Briggs*, 2021-UP-380 (S.C. Ct. App. filed Nov. 3, 2021).

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 408-14. On October 18, 2022, an evidentiary hearing was held before the Honorable Brian M. Gibbons. App. 431-89. Rodney Richey represented petitioner, and Chelsey Marto represented the state. App. 431.

On March 21, 2023, Judge Gibbons signed an order denying PCR. App. 499-517. The PCR court found petitioner did not meet the burden of proof concerning his allegation that defense counsel was ineffective for failing to object to the state's Golden Rule argument during closing. The PCR court agreed with defense counsel that the referenced passage was not a

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[1] Petitioner's 2010 convictions for first degree criminal sexual conduct with a minor and lewd act were overturned on appeal from the denial of his application for post-conviction relief. *Briggs v. State*, 421 S.C. 316, 806 S.E.2d 713 (2017). Petitioner was tried and convicted a second time by the state in 2019.

"Golden Rule argument," and was not objectionable. The court further found no prejudice because this passage was "not so crucial as to undermine the result" of trial. App. 515.

On December 18, 2023, counsel filed the petition for a writ of certiorari. The state filed its return on May 13, 2024. On September 18, 2025, the Court of Appeals issued an order granting certiorari and ordering briefing. On October 17, 2025, counsel filed the brief of petitioner. The state filed its brief of respondent on October 21, 2025.

The Court of Appeals affirmed the PCR court's denial of relief in *Briggs v. State*, 2026 UP-125 (S.C. Ct. App. Filed March 18, 2026). Petitioner and the state sought rehearing, both petitions were denied on May 20, 2026.

This petition for a writ of certiorari follows.

ARGUMENT

The Court of Appeals erred finding no prejudice where the solicitor's improper Golden Rule argument during closing prejudiced petitioner by inviting the jury to decide the case based on emotion instead of the evidence.

Relevant facts

The alleged victim (minor) was fifteen years old at the time of petitioner's trial. She was living with her grandmother, Donna Parker, in North Carolina. App. 56, l. 4 – 57, l. 24. Petitioner was minor's mother's live-in boyfriend in 2008-2009 when the alleged conduct occurred. Minor was four or five years old at that time. Minor's mother did not testify at trial. App. 57, l. 1 – 58, l. 21.

Minor testified that her mother left for work early in the morning and her siblings rode an early school bus leaving her alone with petitioner before she got on a school bus midmorning. Minor claimed petitioner touched her sexually and had oral sex with her before she left for school in the morning. App. 60, l. 1 – 62, l. 23. She testified petitioner would then "walk [her] to the bus." R. 62, l. 21 – 63, l. 3. Minor did not tell anyone about the situation "because [she] was scared." R. 63, ll. 23 – 24. At some future time, minor told her grandmother, Donna Parker, that petitioner had been touching her. App. 66, l. 1 – 67, l. 4.

Throughout closing argument, the solicitor implied to the jury that it was nonsensical that minor would "fabricate" this story. App. 352, ll. 8-20; 353, ll. 9-10; 358, ll. 12-14; 381, ll. 19-22. Additionally, the solicitor made the following remarks:

> So let's talk about lying for just a minute. Now, there are people who are pathological liars and they lie about everything. We're gonna set them aside, we're not considering them. Typically [people] will lie for two reasons, to get out of trouble or to get some kind of a benefit.
>
> . . .

> [W]hat kind of benefit did [minor] get from this? She got to talk to multiple people about a sexual experience and she's a little kid. And she tells about this and then she finds out that her mom is still talking to her abuser. So she got no parental support. She got to have a gynecological exam, which none of you men have experienced but they are not fun at all. So she had to go through that.

App. 348, l. 16—349, l. 12.

> . . .
>
> [I]t's difficult for people to talk in public. That's one of the number one fears. When y'all came in and you sat down and you found out that you were gonna have to stand up and you're gonna have to talk about your name and who your spouse is and where you work and where your spouse works, most of you got a knot in the pit of your stomach.

App. 349, ll. 13-19.

> And then when you realized it was going in alphabetical order and it was getting closer to your name, that knot probably got a little bit worse and your heart starts pounding and your throat starts to constrict because you're gonna have to stand up and talk about you briefly in front of a bunch of strangers and it was very scary for most of you. <u>Imagine if what the clerk of court had said to you is stand up and tell me about your worst sexual experience. Think of what that would have been like.</u>

App. 349, l. 20—350, l. 4 emphasis added. Defense counsel did not object during the solicitor's closing argument.

At petitioner's PCR hearing, defense counsel admitted he did not make an objection to the state's closing argument. Counsel testified he did not object because he disagreed that the solicitor's comment was objectionable as a Golden Rule argument. App. 476, ll. 2-17.

Discussion

Trial counsel was deficient for failing to object to the state's obvious appeal to the emotions of the jury in a case that came down to witness credibility. In its order, the PCR court points to one specific remark made during closing where the solicitor asked the jury why the minor would fabricate evidence. App. 514. That statement in combination with numerous

similar statements throughout was impermissible vouching. However, the most prejudicial comment made during closing was when the solicitor asked jurors to consider what it would feel like to recount their "worst sexual experience." The solicitor directly implored jurors to put themselves in minor's shoes by considering how they would feel recounting their "worst sexual experience" in front of others.

The state's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981). "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." *Brown v. State*, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009) (Quoting *State v. Reese*, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)).

Generally, "[t]he assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). Solicitors may not vouch for a witness's credibility, because doing so improperly invades the province of the jury and places the government's prestige behind the witness. *Tappeiner v. State*, 416 S.C. 239, 250–51, 785 S.E.2d 471, 476–77 (2016) (citing *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001)) (stating that a solicitor improperly vouches for a witness's credibility "by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony"); *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). Thus, solicitors must restrict closing remarks to the record and the reasonable inferences that may be drawn therefrom. *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

Additionally, solicitors must tailor their remarks "so as not to appeal to the personal biases of the jury" or "arouse the jurors' passions or prejudices." *Tappeiner* at 250-251, 785 S.E.2d 471 (quoting *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). Accordingly, solicitors should avoid comments that ask jurors to place themselves in the victim's—or another party's—shoes, because those types of comments tend to "'completely destroy all sense of impartiality of the jurors.'" *Brown v. State*, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009) (quoting *State v. Reese*, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)).

Improper comments do not automatically require reversal if they are not prejudicial to the defendant. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). On appeal, the court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there was overwhelming evidence of the defendant's guilt. *Id.* The appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.* The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974); *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760, cert. denied, 522 U.S. 853 (1997).

In its opinion, the Court of Appeals properly found, contrary to the PCR court's finding, the comment made by solicitor during closing *was* an improper Golden Rule argument. Notwithstanding that fact the court found that petitioner failed to show the improper argument "so infected his trial with unfairness as to result in a denial of due process." *Briggs v. State*, 2026 UP-125 (S.C. Ct. App. Filed March 18, 2026).

In support of the court's finding the improper argument was not prejudicial to petitioner the court cited, among others, the cases discussed below. In *Randall v. State*, this Court found

the solicitor's comparison of defendant to a cockroach during closing did not so infect the trial as to deny due process. 356 S.C. 639, 591 S.E2d 608 (2004). The defendant in that case was convicted of trafficking drugs, and the solicitor told the jury, "drug dealers are filthy just like cockroaches . . . everything they touch, they contaminate." *Id.* at 642, 591 S.E.2d at 610. This Court in *Randall* found that, given facts of the case, the cockroach analogy did not affect the jury's verdict. *Id.* at 643, 591 S.E.2d at 610. This Court concluded, "This case is more akin to *State v. Tubbs,* 333 S.C. 316, 509 S.E.2d 815 (1999) in which the Court of Appeals held seven isolated references to the defendant's nickname 'Cobra,' though undesirable, did not so infect the trial with unfairness as to deprive the defendant due process." *Id.* at 643, 591 S.E.2d at 611.

In *Vasquez v. State*, this Court held trial counsel's failure to object to the solicitor's references to domestic terrorism and terror attacks of September 11, 2001, in a case involving a Muslim defendant was ineffective assistance of counsel. 388 S.C. 447, 698 S.E.2d 561 (2010). This Court reasoned, "[b]ecause there was no legal or evidentiary support for the solicitor's use of the term 'domestic terrorist,' the comments invoked circumstances outside of the record. Furthermore, by verbally drawing a direct correlation between Petitioner's acts and the events of September 11th, the solicitor appealed to the jurors' sense of passion and prejudice involving anti-Muslim sentiment. Additionally, given that trial counsel did not object, there was no opportunity for the trial judge to even attempt to cure the error." *Id*, at 463, 698 S.E.2d at 569.

Vasquez nor *Randall* are analogous to petitioner's case where the solicitor asked the jury to put themselves in the mind of the alleged victim. However, this case is comparable to *Vasquez*, in one significant way, where in both cases the solicitor *repeatedly* made improper comments throughout closing. The comments thread a narrative throughout closing which improperly asked the jury to decide the case on circumstances outside the record. Here, the

solicitor made repeated improper remarks, suggesting to the jury that the alleged victim would never lie and suggesting the jury put themselves in the alleged victim's position. The solicitor used their closing to suggest the jury should decide petitioner's case on feelings instead of on the evidence presented at trial. Furthermore, because the comments were not objected to there was no opportunity for the trial court to give a curative instructive.

The cases below are more closely analogous to petitioner's case and are instructive to deciding the issue at hand.

In *Brown v. State*, this Court held trial counsel's failure to object when the solicitor impermissibly asked the jury to "speak up" for the child victim during closing did not prejudice defendant and did not constitute ineffective assistance of counsel. 383 S.C. 506, 680 S.E.2d 909 (2009). In that case this Court agreed with the PCR court that trial counsel was deficient in failing to object to the solicitor's improper closing argument. *Id.* at 517, 680 S.E.2d at 915. However, this Court found no prejudice where the comments were at the very end of closing and limited, and there was overwhelming evidence of Brown's guilt where the state presented four eyewitnesses to Brown's sexual misconduct against the child. *Id.* at 517-518, 680 S.E.2d at 915-916.

In *Tappeiner v. State*, this Court reversed the denial of PCR and held defendant was prejudiced by trial counsel's erroneous failure to object to the state's improper comments during closing argument. 416 S.C. 239, 785 S.E.2d 471 (2016). In that case this Court found trial counsel was deficient in failing to object to the solicitor's repeated vouching for the victim's credibility throughout closing, and the solicitor's emotional appeal at the conclusion of its closing. *Id.* at 252, 785 S.E.2d at 477-78.

In *State v. New*, this Court held that the solicitor's comments "during closing argument

that defendant's accomplice, who had entered guilty plea and testified for [the] state, had nothing to gain by testifying, and was exposing himself to danger in prison by being considered a 'rat,' were based on reasonable inferences from evidence, and were not an impermissible attempt to bolster his credibility." 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999).

In *Fortune v. State*, our Supreme Court held the solicitor engaged in prosecutorial misconduct by remarking, during closing, "that it was his job to 'present the truth,' that he had a statutory duty to screen cases and would have dismissed the case if he had determined defendant was not guilty, and that the job of defense attorneys was to manipulate the truth, shroud the truth, and confuse jurors," and the solicitor's improper remarks unfairly prejudiced defendant, depriving him of a fair trial. 428 S.C. 545, 837 S.E.2d 37, (2019). The Court specifically found the solicitor's "improper remarks violated the defendant's rights under the Due Process Clause," and reversed the denial PCR. *Fortune*, at 547, 837 S.E.2d at 38 (2019).

Here, the solicitor's invitation to the jury did precisely what *Brown* and *Tappeiner* warned against. The solicitor implored jurors to put themselves in minor's shoes by considering how they would feel recounting an embarrassing and upsetting experience in front of others. Defense counsel failed to object to the improper suggestion by the solicitor and thus, the trial court could not cure the error with instruction.

The PCR court and the Court of Appeals erred finding "this portion of closing was not so crucial as to undermine the results of the proceedings." App. 515. Here, as in *Tappeiner*, petitioner was prejudiced by remarks made during the solicitor's closing where there was no physical evidence in the case, only the minor's assertion of petitioner's conduct. *See Tappeiner*, at 253, 785 S.E.2d at 478 (reasoning evidence of Tappeiner's guilt was not overwhelming where

the case was entirely dependent on a credibility determination between the prosecution's witnesses and the defense's witness).

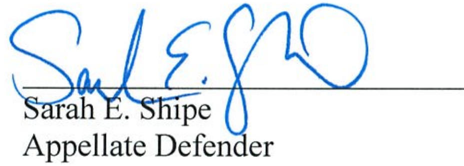
Moreover, this case was undeniably "emotionally charged" where it involved alleged criminal sexual conduct with a young child. Thus, the solicitor's appeal to the jury to put themselves in the shoes of the minor by imagining they had to discuss their worst sexual experience impermissibly invited the jury to set aside impartiality and consider the evidence from the "subjective position of the child." *See Brown v. State*, 383 S.C. 506, 516–17, 680 S.E.2d 909, 915 (2009).

Petitioner respectfully requests this Court grant certiorari in this case in light of the case law cited above.

CONCLUSION

Based on the foregoing argument, a writ of certiorari should be issued to allow full briefing on these issues.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of June, 2026.