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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
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2026-UP-125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

ANTHONY BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000551

APPENDIX

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MARK FARTHING
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-4117

BARRY JOE BARNETTE
Solicitor, Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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BRIEF OF PETITIONER

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the post-conviction relief court err in finding defense counsel was not ineffective for failing to object to statements made by the solicitor during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt?

STATEMENT

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, this Court issued an order granting certiorari and ordering briefing.

This brief of petitioner follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. *Smalls v. State*, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839–40 (2018). The reviewing court must defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. *Id.* (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, the appellate court reviews questions of law de novo, with no deference to the PCR court. *Id.*

"The trial court has broad discretion when dealing with the propriety of the solicitor's argument, including the question of whether to grant a defendant's mistrial motion." *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). "The trial court's discretion will not be overturned absent a showing of an abuse of discretion amounting to an error of law that prejudices the defendant." *Id.* "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record." *Id.* at 324, 468 S.E.2d at 625. "The appellant has the burden of proving they did not receive a fair trial because of the alleged improper argument." *Id.* at 324, 468 S.E.2d at 625.

ARGUMENT

The PCR court erred in finding defense counsel was not ineffective for failing to object to statements made by the solicitor during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt.

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, while living in Spartanburg County in 2008, she shared a bedroom with her sister. Her brother had his own room. She said petitioner and her mother slept on a "pull-out couch in the living room." This was the year minor started K-4 at Chesnee Elementary School. App. 58, l. 19 – 59, l. 14.

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. 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.

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

The PCR court erred by summarily finding the solicitor's impermissible remarks to the jury during closing argument were not Golden Rule arguments and were, therefore, not objectionable. The PCR court erred finding there was no prejudice because this portion was "not so crucial as to undermine the results of the proceeding." App. 515.

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 *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).

In *Brown v. State*, our Supreme 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 the 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, the 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*, the 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 the 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.

Here, 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." This invitation to the jury did precisely what *Brown* and *Tappeiner* warned against. The solicitor directly implores jurors to put themselves in minor's shoes by considering how they would feel recounting a delicate experience in front of others.

The PCR court erred in 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).

CONCLUSION

By reason of the foregoing argument, petitioner respectfully requests this Court reverse the lower court's denial of post-conviction relief and remand his case for a new trial.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of October, 2025.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTHONY BRIGGS,

PETITIONER

V.

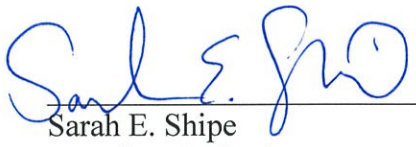
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000551

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Petitioner in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Anthony Neil Briggs, #342410, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 17th day of October, 2025.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000551

ANTHONY BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON CERTIORARI

"Did the post-conviction relief court err in finding defense counsel was not ineffective for failing to object to statements made by the solicitor during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt?"

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the PCR judge somehow err by declining to find defense counsel was constitutionally ineffective for failing to object to the solicitor's closing argument remarks when—just as both defense counsel and the PCR judge correctly recognized—the solicitor's remarks were not objectionable in any way?

STATEMENT OF THE CASE

In February of 2009, Petitioner Anthony Briggs was arrested following an investigation into allegations he sexually abused his girlfriend's daughter when she was four to five years old. In May of 2009, the Spartanburg County Grand Jury indicted Briggs for first-degree criminal sexual conduct with a minor. In August of 2010, the Spartanburg County Grand Jury additionally indicted Briggs for committing a lewd act upon a child. Later that month, a jury trial was commenced in the Spartanburg County Court of General Sessions with the Honorable J. Derham Cole, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Briggs as indicted. Following the verdict, the trial judge sentenced Briggs to concurrent terms of imprisonment of life without parole for first-degree criminal sexual conduct with a minor and fifteen years for committing a lewd act upon a child. Briggs then timely initiated an appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished decision unanimously affirming Briggs's convictions. State v. Briggs, Op. No. 2012-UP-323 (S.C. Ct. App. filed May 20, 2012). Thereafter, on June 19, 2012, remittitur was issued.

Subsequent to the issuance of the remittitur, Briggs timely filed an application for post-conviction relief ("PCR"), and, in response, the State filed a return requesting an evidentiary hearing. Briggs—through counsel—then filed an amended PCR application raising additional grounds. On November 12, 2013, an evidentiary hearing was conducted in the Spartanburg County Court of Common Pleas with the Honorable Robin B. Stilwell, circuit court judge, presiding. At the conclusion of the hearing, the PCR judge took the matter under advisement. Thereafter, through an order filed on February 4, 2014, the PCR judge granted Briggs's PCR application on two grounds. The State then timely filed a motion to alter or amend pursuant to

Rule 59(e) of the South Carolina Rules of Civil Procedure, and the PCR judge summarily denied the State's motion through an order filed on March 3, 2014. Following that, the State timely initiated an appeal of the PCR judge's decision, and Briggs initiated a cross-appeal.[1]

On appeal, both the State and Briggs filed petitions for a writ of certiorari in the Supreme Court. On July 18, 2016, the Supreme Court granted the State's petition in part and denied Briggs's petition. Thereafter, following briefing, the Supreme Court affirmed the PCR judge's grant of relief through a published opinion issued on October 25, 2017. Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017). On November 13, 2017, remittitur was issued.

Subsequently, on March 25, 2019, a second jury trial was commenced on Briggs's indicted charges in the Spartanburg County Court of General Sessions with the Honorable R. Keith Kelly, circuit court judge, presiding. At the conclusion of the three-day trial, the jury once again convicted Briggs as indicted. Following the verdict, the trial judge—consistent with the first trial judge—sentenced Briggs to concurrent terms of imprisonment of life without parole for first-degree criminal sexual conduct with a minor and fifteen years for committing a lewd act upon a child. Briggs then timely initiated an appeal.[2]

On appeal, Briggs's appellate counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), along with a petition to be relieved as counsel, and Briggs personally submitted several pro se documents. After reviewing the matter, the Court of Appeals issued an

[1] The records from the State's appeal and Briggs's cross-appeal are presently available through the South Carolina Appellate Public Index. Appellate Records from Anthony Neil Briggs v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=56357.

[2] The appellate records from Briggs's second direct appeal are presently available through the South Carolina Appellate Public Index. Appellate Records for State v. Anthony Briggs, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=69678.

unpublished decision dismissing the appeal and granting appellate counsel's petition to be relieved. State v. Briggs, Op. No. 2021-UP-380 (S.C. Ct. App. filed Nov. 3, 2021). Thereafter, on November 24, 2021, remittitur was issued.

Subsequent to the issuance of the remittitur, Briggs timely filed another PCR application, and, in response, the State filed a return requesting an evidentiary hearing along with a more definite statement. On October 18, 2022, an evidentiary hearing was conducted in the Spartanburg County Court of Common Pleas with the Honorable Brian M. Gibbons, circuit court judge, presiding. At the conclusion of the hearing, the PCR judge took the matter under advisement. Thereafter, through an order filed on March 29, 2023, the PCR judge denied and dismissed Brigg's latest PCR application with prejudice. Briggs then timely filed a notice of appeal.

After initiating his appeal, Briggs filed a petition for a writ of certiorari with the Supreme Court, and the Supreme Court transferred the matter to the Court of Appeals.[3] Subsequently, on September 18, 2025, the Court of Appeals granted Briggs's petition.

[3] The records from Briggs's current PCR appeal are presently available through the South Carolina Appellate Court Public Index. Appellate Records for Anthony Briggs v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=78257.

STANDARD OF REVIEW

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge's factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) ("Under the proper standard of review, the appellate court's 'view' must be limited to whether there is probative evidence to support the PCR court's factual findings."). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge's rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014); see also Strickland v. Washington, 466 U.S. 668, 698 (1984) (recognizing the question of whether defense counsel was constitutionally ineffective "is a mixed question of law and fact"). Ultimately, if the PCR judge's decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR judge correctly declined to find defense counsel was constitutionally ineffective for failing to object to the solicitor's closing argument remarks because—just as both defense counsel and the PCR judge correctly recognized—the solicitor's remarks were not objectionable in any way.

Relevant Facts

During Briggs's second trial on charges of first-degree criminal sexual conduct with a minor and committing a lewd act upon a child, Briggs's victim ("Victim"), who was by then fifteen years old, testified about sexual abuse she suffered at the hands of Briggs—her mother's live-in boyfriend—on mornings when she was left home alone with him at the ages of four to five. (App'x pp. 7-8; pp. 56-60; p. 71). Specifically, Victim recounted Briggs—on multiple occasions—touched her "private" with his hand underneath her clothing, touched her "private" with his "private," and licked her "private" on a pull-out couch in the home's living room while her mother was at work and her other siblings were already at school. (App'x pp. 59-62; p. 71). Additionally, Victim further acknowledged she had previously stated during forensic interviews conducted shortly after she disclosed the abuse that Briggs had also subjected her to anal sex and digital penetration. (App'x p. 69). However, Victim indicated she no longer had any memories of that specific abuse by that point in time and had tried her best over the years to forget what had happened to her. (App'x pp. 67-69).

In addition to Victim's testimony, the recordings from the forensic interview were admitted into evidence and played for the jury. (App'x pp. 82-83). Likewise, several witnesses, including a pediatrician who conducted a sexual assault examination of Victim in the aftermath of her disclosure, confirmed Victim repeated her disclosure of the sexual abuse to them. (App'x p. 78; pp. 96-97; pp. 107-110; pp. 179-180).

Beyond that, the detectives who interviewed and ultimately arrested Briggs after the allegations came to light discussed a number of troubling remarks he made to them during their investigation, which they perceived to be "non-verbal" and incriminating admissions. (App'x pp. 115-130; pp. 138-169). Furthermore, several jail call recordings containing incriminating statements Briggs made to Victim's mother after his arrest were admitted into evidence and played for the jury. (App'x p. 135). On those recordings, Briggs opined oral sex could not be proved or disproved, discussed how his case involved his word against Victim's, encouraged Victim's mother not to bring Victim to court, and—while promising to marry her and take care of her financially if she did as directed—instructed Victim's mother to move out of state with the children while taking steps to avoid being tracked.[4] (App'x pp. 167-169).

After that testimony and evidence was introduced, Briggs elected to testify in his own defense and acknowledged he had been left alone with Victim some mornings just as Victim had described. (App'x pp. 287-288). However, he denied sexually abusing her and claimed he loved her "[w]ith all [his] heart."[5] (App'x p. 289; p. 294). He further appeared to contend Victim's biological father was responsible for the purportedly false accusations and—relying on hearsay supposedly relayed to him—suggested Victim's minor brother was potentially the true perpetrator of the sexual abuse.[6] [7] (App'x p. 313; pp. 317-318). Significantly though, Briggs

[4] Victim's mother remained in her relationship with Briggs even after Victim disclosed the sexual abuse. (App'x pp. 65-66).

[5] To bolster his claim of loving Victim, Briggs also offered testimony from his mother and stepfather, who both stated Briggs *appeared* to have a loving relationship with Victim based on their own personal observations of the two. (App'x p. 248; pp. 251-252; p. 259; p. 263).

[6] Victim testified in reply and denied her brother ever sexually abused her. (App'x pp. 337-339).

[7] Although Briggs claimed he was told about the supposed sexual abuse involving Victim's minor brother while he was in jail, the contents of the jail call recordings did not support his

also acknowledged he had encouraged Victim's mother to "disappear" with Victim and her siblings after he was arrested in connection to the allegations, admitted he urged her not to take the children back to the child advocacy center, and conceded he stated "no face, no case" to her as support for his requests. (App'x pp. 295-296; pp. 323-326).

At the conclusion of the evidentiary phase of trial, the solicitor presented her closing argument to the jury and, as part of her remarks, stated—without objection—the following:

> So the judge told you that he is the arbitrator of the law and you guys are the fact finders. And you get to decide. You've heard the witnesses. You get to decide the credibility of the witnesses. Whether you believe every single thing they said, a little bit of what they said, or nothing of what they said. And you use your common sense and your life experiences.
>
> You guys have been living longer than 18 years. Some of us for much longer than that. And we all have life experiences and we all know kind of how to read people and we all know about people's motives and the bias. And that's something else that you consider when you're determining the credibility of the jury. Who has a motive to lie?
>
> 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 w[e']ll lie for two reasons, to get out of trouble or to get some kind of a benefit.
>
> So [Victim] was four and five when this -- the timeframe when we know this was possibly going on. Of course, she doesn't know the exact dates because she was four and five, but she wasn't in any kind of trouble. And the kind of lie you would tell to get out of trouble is to blame somebody else for something. Like, oh, I broke this, but my brother did.

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claim. (App'x pp. 317-318; p. 341). However, one of Briggs's friends, Amber Wofford, testified for the defense and claimed Victim told her a few months after Briggs was arrested that she had been abused by her brother as opposed to Briggs. (App'x p. 243). By her own admission, Wofford never alerted law enforcement of that critical revelation, though. (App'x p. 231).

> Or you might lie to get a benefit. So what kind of benefit did [Victim] 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.
>
> And you -- put you -- it'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.
>
> 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 scary for most of you.
>
> 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.

(App'x pp. 348-350).

Contrastingly, during defense counsel's closing argument, defense counsel repeatedly attempted to attack Victim's credibility and, in doing so, noted she had not been able to remember various things during her trial testimony. (App'x pp. 365-380). And, to drive his point home, defense counsel stated: "[Y]'all known it to be true. Traumatic things you remember." (App'x p. 368). As his efforts to discredit Victim continued, defense counsel further suggested her behavior during the forensic interview was not consistent with the behavior of someone who had truly been abused while stating: "You don't expect somebody to just open up to a stranger and just chat all about what happened to you, okay?" (App'x pp. 369-371; pp. 374-375).

Following the closing arguments, the trial judge—who had earlier ensured the jurors understood the parties' opening statements and closing arguments were not evidence—instructed the jury on the applicable law. (App'x p. 43; pp. 382-397). In doing so, the trial judge explained to the jurors it was their exclusive duty to determine the facts in the case and advised them they should carry out that duty by conducting a common-sense evaluation of the evidence and testimony presented. (App'x p. 383). Furthermore, the trial judge instructed the jurors of their responsibility in determining the credibility and believability of the witnesses while emphasizing they could employ their common sense and good judgment in doing so. (App'x pp. 391-392).

Thereafter, the case was submitted to the jury. (App'x p. 398). And, after just over two hours of deliberations, the jury convicted Briggs as indicted. (App'x pp. 398-400).

Subsequently, following an unsuccessful appeal, Briggs sought relief through the PCR process. (App'x pp. 408-414). As part of the claims raised, Briggs alleged defense counsel was constitutionally ineffective for failing to object to the solicitor's closing arguments remarks about what it would be like to have to testify in front of others about your worst sexual experience and about what benefit the victim would have obtained from disclosing the abuse. (App'x p. 459; p. 464). However, when questioned about his failure to object in that regard, defense counsel explained he did not believe the solicitor's remarks were actually objectionable, including because the solicitor was not asking the jurors to place themselves in the shoes of the victim at the time of the sexual abuse but, instead, was permissibly asking them to put themselves in the position of a witness for purposes of evaluating the witness's demeanor and credibility on the witness stand. (App'x p. 476; p. 485).

Ultimately, after considering the matter, the PCR judge declined to grant relief. (App'x p. 499; pp. 516-517). In so ruling, the PCR judge concluded defense counsel was not deficient

for failing to object to the now-challenged portion of the solicitor's closing argument because the solicitor's remarks did not constitute an improper "Golden Rule" argument and were not, in fact, objectionable. (App'x p. 515). The PCR judge further concluded Briggs likewise failed to meet his burden of establishing he was prejudiced by those remarks because they were "not so crucial as to undermine the results of the proceedings." (App'x p. 515).

Applicable Law Regarding Ineffective Assistance of Trial Counsel Claims

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). Pursuant to that right, the defendant is entitled to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970); see Strickland, 466 U.S. at 685 ("An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair."). Significantly, effective assistance of counsel does *not* mean perfect representation. See Burt v. Titlow, 571 U.S. 12, 24 (2013) ("[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]"); Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688. Meanwhile, counsel's assistance is considered to be constitutionally ineffective when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

When faced with a claim of ineffective assistance of counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant raising an ineffective assistance of counsel claim must establish: (1) counsel's representation fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); see Stone v. State, 419 S.C. 370, 380, 798 S.E.2d 561, 566 (2017) (instructing "the law requires [a reviewing court to] presume counsel rendered adequate assistance and exercised reasonable professional judgment" and only find to the contrary when the applicant has overcome that presumption by establishing both deficiency and prejudice).

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); see Harrington v. Richter, 562 U.S. 86, 110 (2011) (instructing the proper analysis "calls for an inquiry into the *objective* reasonableness of counsel's performance, not counsel's subjective state of mind" (emphasis added)). When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for overcoming that presumption. Butler, 286 S.C. at 442, 334 S.E.2d at 814; see Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). To establish counsel's performance was deficient, the applicant must

demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. Thus, counsel's performance will be considered to be deficient only when it objectively amounted to incompetence under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Richter, 562 U.S. at 105; see Dunn v. Reeves, 594 U.S. 731, 739 (2021) ("[E]ven if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." (citation, internal quotations, and brackets in original omitted)).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. In order for that burden to be met, counsel's deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989); see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome."). Importantly, "[t]he likelihood of a different result must be substantial, not just conceivable." Richter, 562 U.S. at 112.

Applicable Law Regarding the Propriety of a Solicitor's Closing Argument

Closing arguments are a basic and important element of the adversarial fact-finding process in a criminal trial. Herring v. New York, 422 U.S. 853, 862 (1975). Such arguments serve "to sharpen and clarify the issues for resolution by the trier of fact in a criminal case" while

also providing both the solicitor and defense counsel with an opportunity to advocate for their respective positions, argue for certain inferences to be drawn from the evidence presented, and identify the weaknesses in the other side's positions. Id.

When presenting a closing argument, a solicitor generally possesses "wide latitude" as to the substance of his remarks to the jury and is fully permitted to prosecute with earnestness and vigor. Bates v. Lee, 308 F.3d 411, 422 (4th Cir. 2002); Berger v. United States, 295 U.S. 78, 88 (1935) ("[A prosecutor] may prosecute with earnestness and vigor—indeed, he should do so."); see also United States v. Isaacs, 493 F.2d 1124, 1164 (7th Cir. 1974) ("The closing argument of a prosecutor need not be confined to such detached exposition as would be appropriate in a lecture . . . because to shear him of all oratorical emphasis, while leaving wide latitude to the defense, is to load the scales of justice." (citations and internal quotations omitted)). However, in presenting arguments to the jury, a solicitor must avoid appeals to the personal biases of the jurors and must not attempt to arouse the passions or prejudices of the jurors. State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981). Significantly, "[i]t is as much [the prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger, 295 U.S. at 88.

Importantly though, the solicitor is generally permitted to use his opportunities to speak directly to the jurors to appeal to them to do their full duty in enforcing the law, urge them to return the verdict desired by the prosecution, employ any legitimate means of impressing upon them their responsibilities, and "dwell on the evil results of crime[.]" State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) (citation and internal quotations omitted). Likewise, the solicitor is unquestionably permitted in arguments to the jury to state and discuss the State's version of the testimony, to comment on the weight to be given to such testimony, and to point

out the matters the jury should and should not consider in arriving at a verdict. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); see Durden, 264 S.C. at 92, 212 S.E.2d at 590 ("[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider." (citation and internal quotations omitted)). Furthermore, the solicitor is permitted to use the available opportunities for jury argument to call into question the credibility of the defenses that have been identified or raised by the opposing side. State v. Liberte, 336 S.C. 648, 653, 521 S.E.2d 744, 746 (Ct. App. 1999).

When evaluating the propriety of a solicitor's remarks to the jury, "[i]t is sometimes difficult to draw the line between proper and improper argument[.]" State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961). "However, some latitude must necessarily be allowed[.]" Id. Resultantly, the solicitor's remarks should and must be evaluated in the context in which they were made, and the most damaging meaning or interpretation should not be "lightly drawn" from those remarks. Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974); see United States v. Robinson, 485 U.S. 25, 33 (1988) (instructing "prosecutorial comment must be examined in context"); State v. Weaver, 361 S.C. 73, 89, 602 S.E.2d 786, 794 (Ct. App. 2004) ("In making this determination, we must examine the alleged impropriety in the context of the entire record.").

Ultimately, when a challenge is raised to the propriety of a closing argument, the burden rests upon the party raising the challenge to establish that the allegedly improper argument rendered the trial fundamentally unfair. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). Such a determination hinges on whether the comments so infected the trial with unfairness as to make the resulting conviction a denial of the defendant's due process rights.

State v. Rudd, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003); see State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997) ("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."). And, for that high bar to be met, "it is not enough that the [challenged] remarks were undesirable or even universally condemned." Darden v. Wainwright, 477 U.S. 168, 181 (1999) (citation and internal quotations omitted). As a result, criminal convictions typically will not be "lightly overturned on the basis of a prosecutor's comments standing alone[.]" United States v. Young, 470 U.S. 1, 11 (1985).

Application of the Applicable Law to Briggs's Case

On appeal, Briggs contends defense counsel was deficient for failing to object to the solicitor's closing argument remarks calling the jurors' attention to the anxiety most people experience when having to speak in public in front of others and asking the jurors to imagine what it would be like having to speak in the courtroom about one's worst sexual experience. As support for that contention, Briggs maintains defense counsel should have objected to the solicitor's remarks because they purportedly constituted an improper "Golden Rule" argument that was an "obvious appeal" to the emotions of the jurors and invited the jurors to "imagine they were the alleged victim and imagine how she felt." Furthermore, Briggs appears to suggest the solicitor somehow impermissibly vouched for the victim through her closing argument remarks by questioning what motive the victim would have had to fabricate the allegations and what benefit she would have received from making her disclosure. Beyond that, Briggs appears to suggest he was somehow prejudiced by the now-challenged remarks to such an extent his due process rights were violated. For those reasons, Briggs asserts the PCR judge erred by declining to grant relief in his case. Briggs is incorrect.

Generally speaking, a "Golden Rule" argument is one that asks the jurors to put themselves in the shoes of one of the parties. State v. Harris, 382 S.C. 107, 120, 674 S.E.2d 532, 538 (Ct. App. 2009); see Braddy v. State, 111 So. 3d 810, 842 (Fla. 2012) ("Golden rule arguments are arguments that invite the jurors to place themselves in the victims position *during the crime* and imagine the victim's suffering." (emphasis added and citation and internal quotations omitted)). In the context of a criminal prosecution, an argument asking the jurors to place themselves in the victim's shoes is ordinarily improper because it tends to completely destroy all sense of impartiality of the jurors and serves to arouse passion and prejudice. Brown v. State, 383 S.C. 506, 515-516, 680 S.E.2d 909, 914 (2009).

Importantly though, "an argument which asks the jurors to draw inferences *from the evidence* based on how a reasonable person would act if placed in the position of the victim is not an improper golden rule argument." Buszkiewic v. State, 424 P.3d 1272, 1277 (Wyo. 2018) (emphasis added). Similarly, "rhetorical questions which ask the jurors to use their common sense and life experiences to weigh the trial evidence do not violate the rules even though the prosecutor may ask the jury what they would do in similar circumstances." Id.

With those principles in mind, the solicitor in Briggs's case did *not* use her closing argument to improperly appeal to the passions or prejudices of the jurors, attempt to get them to place themselves in Victim's shoes at the time she was being abused, or seek for them to consider how Victim must have been feeling when she was enduring the sexual abuse at Briggs's hands. Instead, the solicitor made remarks designed to encourage the jurors to rely on their own common sense and knowledge of human nature when evaluating the credibility of *trial evidence* by considering factors that might have impacted Victim's testimony and demeanor when she was on the witness stand publicly speaking in front of a group of strangers about intimate topics

during Briggs's trial. Cf. United States v. Kirvan, 997 F.2d 963, 964 (1st Cir. 1993) ("Kirvan's brief relies primarily on cases that forbid so-called 'golden rule' arguments in which plaintiffs or prosecutors ask the jury to put itself in the place of the victim. But 'golden rule' cases do not apply where, as here, the jury is asked to put itself in the place of an *eyewitness*. In this situation, the invitation is not an improper appeal to the jury to base its decision on sympathy for the victim but rather a means of asking the jury to reconstruct the situation in order to decide whether a witness' testimony is plausible." (citation omitted)); State v. Victor O., 20 A.3d 669, 688 (Conn. 2011) (concluding the prosecutor's closing arguments remarks, including ones asking the jurors "to imagine how [the victim] felt while testifying and to consider how those feelings may have affected his demeanor during that testimony," were not inflammatory and "fell well within the limits of fair argument"); State v. Bell, 931 A.2d 198, 214-215 (Conn. 2007) ("In the present case, . . . the prosecutor was not appealing to the jurors' emotions or to their sympathies for the victim. Rather, he was asking the jurors to draw inferences from the evidence that had been presented at trial regarding the actions of the defendant and [a witness], based on the jurors' judgment of how a reasonable person would act under the specified circumstances."); State v. Wright, 216 S.W.3d 196, 201 (Mo. Ct. App. 2007) ("[H]ere the jurors were not asked to place themselves in the victim's shoes and imagine the details of the crime being committed on them. Rather, the jury was asked to imagine being the thirteen-year-old victim and being asked to testify about sexual matters in front of adult strangers. This did not suggest a personal danger to the jury or their families and thus did not constitute improper personalization . . . . Instead, it was an attempt by the prosecutor to explain to the jury why Victim appeared nervous while testifying and, in effect, made Victim's testimony more credible." (citation omitted)); Buszkiewic, 424 P.3d at 1277-1278 ("In this case, the prosecutor was not making an appeal for

the jury to decide the case based upon sympathy or bias rather than the evidence. Instead, she requested that the jury consider the evidence using their life experiences and common sense. When she asked the jurors whether they would remember the number of times they had been slapped, she was requesting that they look at the evidence through the lens of their ordinary affairs. In other words, the prosecutor was simply making the point that it is human nature not to remember all of the details of a violent encounter, such as the number of slaps.").

Meanwhile, by pointing out as part of her closing argument remarks the minor victim had no reason to fabricate the allegations of sexual abuse and received no benefit from making those allegations, the solicitor did *not* improperly vouch for Victim or engage in any other impropriety. Instead, by doing so, the solicitor was merely relying on reasonable inferences that could be drawn from *the evidence in the record* to explain to the jurors why they should credit Victim's testimony. See State v. Collier, 421 S.C. 426, 436-437, 807 S.E.2d 206, 212 (Ct. App. 2017) (concluding the solicitor's closing argument remarks indicating a witness had no motivation to lie under the circumstances involved and was a "reliable witness" did *not* constitute improper vouching or bolstering as the remarks were confined to the record and based on the evidence presented); cf. United States v. Hall, 514 F. App'x 352, 356 (4th Cir. 2013) ("[T]he government's remarks questioning what motive Underwood had to inculpate Hall were not inconsistent with the evidence or improper in any way."); People v. Curry, 990 N.E.2d 1269, 1284 (Ill. App. Ct. 2013) ("Defendant . . . asserts the prosecutor improperly vouched for Thompson's credibility when the prosecutor questioned why Thompson would lie. However, we do not construe the prosecutor's argument as expressing her personal belief in Thompson's credibility; rather, the prosecutor's commentary highlighted Thompson's lack of bias or motive to testify untruthfully. *Such argument is proper*." (emphasis added)). Critically, as has long

been recognized, that was and is *exactly* what closing arguments are for, and the solicitor did nothing improper by calling the jurors' attention to facts and circumstances that justified them believing Victim's account of what occurred. See State v. Busse, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023) ("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. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990) ("A solicitor's argument concerning the credibility of the State's witnesses based on the record and its reasonable inferences is not error. A prosecutor has the right to state his version of the evidence and to comment on the weight to be given such testimony." (citations omitted), overruled on other grounds by State v. Evans, 371 S.C. 27, 637 S.E.2d 313 (2006)); cf. State v. New, 338 S.C. 313, 320, 526 S.E.2d 237, 240 (Ct. App. 1999) (concluding the solicitor's closing argument remarks indicating a witness would be considered a "rat" for testifying did not constitute improper bolstering and, instead, were reasonable inferences from the record that were based on common knowledge).

Therefore, just as both defense counsel and the PCR judge correctly recognized, the solicitor's closing argument remarks—when viewed in context as required—neither constituted an improper "Golden Rule" argument nor were otherwise objectionable or improper and, instead, were entirely proper remarks that were fully consistent with the very purpose of a closing argument. See Humphries, 351 S.C. at 373, 570 S.E.2d at 166 ("A solicitor has a right . . . to comment on the weight to be given [to a witness's] testimony."); see also State v. Raffaldt, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995) ("Since this case was essentially a 'swearing contest', it was proper for the solicitor to comment of the credibility of the witnesses and the defendant."); cf. Williams v. State, 689 So. 2d 393, 399 (Fla. Dist. Ct. App. 1997) ("We disagree with

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Williams' contention that the argument here constitutes a 'golden rule' argument. The proper exercise of closing argument is to review the evidence and to explicate those inferences which may reasonably be drawn from the evidence. Here, the state properly asked the jury to understand the circumstances of the child witness's viewing of the crime as a plausible explanation of [the child witness]'s confusion as to the car's color. The argument was not a plea for the jury to abandon its obligation to determine the case based solely on the evidence and to place itself in the victim's position." (citation and internal quotations omitted)). As a result, defense counsel was not and could not have been deficient for failing to raise a meritless objection. See State v. Schwaderer, 898 N.W.2d 318, 332 (Neb. 2017) ("As a matter of law, counsel cannot be ineffective for failing to raise a meritless argument."); Winkler v. State, 418 S.C. 643, 653, 795 S.E.2d 686, 692 (2016) ("One of the key circumstances a court must consider in its examination of counsel's decision not to make a particular objection is whether there was any law to support the objection."). Moreover, given the nature of the remarks and the context in which they were made, they likewise were not something that could have rendered Briggs's trial unfair to him in any way or otherwise improperly impacted the outcome of the proceedings. See Fortune v. State, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019) ("To find whether the assistant solicitor's comments in closing argument violated the defendant's due process rights, we must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial."); cf. Darden, 477 U.S. at 180-181 (concluding Darden's murder trial was not rendered fundamentally unfair by the prosecutor's closing argument remarks, which attempted to place some of blame on the Florida Department of Corrections for releasing Darden on weekend furlough prior to the incident, implied the death penalty was the only way to ensure Darden would not commit a future similar crime, employed

the term "animal" to describe Darden, and expressed a personal desire for Darden to have been killed or be killed); State v. Copeland, 321 S.C. 318, 326, 468 S.E.2d 620, 625 (1996) (finding the trial judge did not abuse his discretion in regard to the solicitor's closing argument "[b]ecause Copeland has not established that she was deprived of a fair determination of her guilt or innocence" as a result of the argument); State v. Lunsford, 318 S.C. 241, 247, 456 S.E.2d 918, 922 (Ct. App. 1995) ("Further, Lunsford failed to demonstrate as he was required to do, that the result of the solicitor's comment was to materially prejudice his right 'to obtain a fair and impartial trial.' " (citations omitted)).

Accordingly, since defense counsel's failure to object to the solicitor's unobjectionable closing argument remarks neither constituted deficient performance nor prejudiced the fairness of Briggs's trial in any conceivable way, the PCR judge correctly concluded Briggs failed to meet his burden of establishing defense counsel was constitutionally ineffective, and there are no valid grounds upon which that correct ruling could now be disturbed on appeal. See Strickland, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."); cf. Finch v. Commonwealth, 681 S.W.3d 84, 98 (Ky. 2023) ("None of the foregoing statements asked the jurors to imagine themselves or someone they care about in the position of the crime victim. They are therefore not 'golden rule' arguments, and no error occurred."); Busse, 439 S.C. at 111, 886 S.E.2d at 212 ("[A] prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer."). The PCR judge's order denying Briggs's application for post-conviction relief should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

BY:_____
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

October 21, 2025

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000551

ANTHONY BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

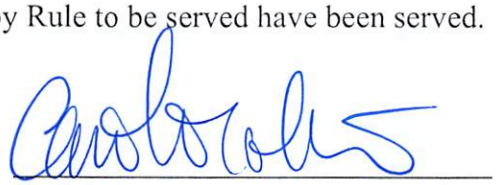
Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Brief of Respondent on Petitioner by sending an electronic copy via email to the address listed in AIS for the following individual:

Sarah E. Shipe, Esquire
S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify all parties required by Rule to be served have been served.
This 21st day of October, 2025.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Anthony Briggs, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2023-000551

Appeal From Spartanburg County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2026-UP-125
Submitted February 3, 2026 – Filed March 18, 2026

AFFIRMED

Appellate Defender Sarah Elizabeth Shipe, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General Mark Reynolds Farthing, both of Columbia, for Respondent.

PER CURIAM: Anthony Briggs appeals the post-conviction relief (PCR) court's denial of his application for PCR, arguing the PCR court erred in finding trial counsel was not ineffective for failing to object to the solicitor's closing argument. We affirm pursuant to Rule 220(b), SCACR.

We hold the PCR court did not err in finding trial counsel was not ineffective for failing to object to the solicitor's closing argument because although the solicitor's comment constituted an improper Golden Rule argument, Petitioner failed to show the improper argument so infected his trial with unfairness as to result in a denial of due process. *See Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018) (stating an appellate court's "standard of review in PCR cases depends on the specific issue before" the court); *id.* at 180-81, 810 S.E.2d at 839 (providing an appellate court will "defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them"; however, an appellate court reviews "questions of law de novo, with no deference to trial courts"); *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("[T]he burden of proof is on the [PCR] applicant to prove the allegations in his application."); *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984) (stating that in order to establish a claim for ineffective assistance of counsel, a PCR applicant must show: (1) counsel's representation was deficient because it "fell below an objective standard of reasonableness"; and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"); *Randall v. State*, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) (providing a closing argument should stay contained to evidence within the record or any reasonable inferences therefrom); *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) (stating a solicitor is allowed to argue its version of the evidence and to comment on how much weight to give such evidence but a solicitor's duty is to see justice done, not to convict a defendant); *id.* (stating a 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" (quoting *State v. Northcutt*, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007))); *State v. Harris*, 382 S.C. 107, 120, 674 S.E.2d 532, 539 (Ct. App. 2009) ("[A] Golden Rule [a]rgument is one that suggests to the jurors they put themselves in the shoes of one of the parties."); *id.* ("In the criminal arena, such an argument is generally improper because it asks the jurors to place themselves in the victim's place. Such an argument tends to destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice, thereby encouraging the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence." (citation omitted)); *Randall*, 356 S.C. at 642, 591 S.E.2d at 610 ("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."); *id.* (stating 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"); *Simmons v. State*, 331 S.C. 333,

338, 503 S.E.2d 164, 166 (1998) (providing an appellate court will review the improper argument in the context of the entire record).

AFFIRMED.[1]

GEATHERS, HEWITT, and CURTIS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED
Apr 02 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2026-UP-125
Submitted February 3, 2026-Filed March 18, 2026

ANTHONY BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000551

PETITION FOR REHEARING

On March 18, 2026, this Court affirmed the lower court's denial of post-conviction relief (PCR) where petitioner argued the PCR court erred finding defense counsel was not ineffective for failing to object to improper comments made by the solicitor during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt. *Briggs v. State*, Op. No. 2026-UP-125 (S.C. Ct. App. Filed March 18, 2026). Petitioner respectfully requests rehearing pursuant to Rule 221(a), SCACR, considering the significant points overlooked and/or

misapprehended by this Court, discussed below.

In its opinion, this Court 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 this 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." In support of this Court's finding the improper argument was not prejudicial to petitioner this Court cited, among others, the cases discussed below.

In *Randall v. State*, our Supreme 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. The 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. The court concluded, "This case is more akin to *State v. Tubbs,* 333 S.C. 316, 509 S.E.2d 815 (1999) in which this Court 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*, the 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 prejudicial ineffective assistance of counsel. 388 S.C. 447, 698 S.E.2d 561 (2010). The 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.

Neither *Vasquez* or *Randall* are analogous to this case where the solicitor asked the jury to put themselves in the mind of the alleged victim. However, this case is comparable—in one important way—to *Vasquez*, because in both instances the solicitor *repeatedly* made improper comments throughout closing. Those comments threaded 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 closing to tell jury to decide petitioner's case on feelings and not on the evidence presented at trial. Moreover, because the comments were not objected to there was no opportunity for the trial court to give a curative instructive.

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

In *Brown v. State*, our Supreme 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 the 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, the 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*, the 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 the 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.

The solicitor's invitation to the jury did precisely what *Brown* and *Tappeiner* warned against. The solicitor implored the jury to put themselves in minor's shoes by considering how they would feel recounting a delicate 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 erred in 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 reconsider this case in light of the case law cited above and grant rehearing.

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

This 2nd day of April, 2026.

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTHONY BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000551

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Anthony Neil Briggs, #342410, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 2nd day of April, 2026.

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000551

ANTHONY BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RESPONDENT'S PETITION FOR REHEARING

Through an unpublished decision issued on March 18, 2026, this Court affirmed the post-conviction relief ("PCR") judge's ruling rejecting Petitioner Anthony Briggs's claim his defense counsel was constitutionally ineffective for failing to object to the solicitor's closing argument remarks. Briggs v. State, Op. No. 2026-UP-125 (S.C. Ct. App. filed Mar. 16, 2026). In doing so, this Court correctly concluded Briggs did not establish any part of the solicitor's closing argument so infected his trial with unfairness to such an extent that it resulted in a denial of due process. However, in addition to that, this Court found defense counsel's performance was, in fact, deficient after determining "the solicitor's comment constituted an improper Golden Rule argument[.]" Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent ("the State") respectfully petitions for rehearing because this Court appears to have overlooked

and misconstrued several important points when finding defense counsel's performance during trial was deficient.[1]

Specifically, as argued by the State in its brief in Briggs's case, a "Golden Rule" argument is generally speaking one that asks the jurors to put themselves in the shoes of one of the parties. State v. Harris, 382 S.C. 107, 120, 674 S.E.2d 532, 538 (Ct. App. 2009); see Braddy v. State, 111 So. 3d 810, 842 (Fla. 2012) ("Golden rule arguments are arguments that invite the jurors to place themselves in the victims position *during the crime* and imagine the victim's suffering." (emphasis added and citation and internal quotations omitted)). In the context of a criminal prosecution, an argument asking the jurors to place themselves in the victim's shoes is ordinarily improper because it tends to completely destroy all sense of impartiality of the jurors and serves to arouse passion and prejudice. Brown v. State, 383 S.C. 506, 515-516, 680 S.E.2d 909, 914 (2009); see State v. Long, 975 A.2d 660, 677 (Conn. 2009) ("The animating principle behind the prohibition on golden rule arguments is that jurors should be encouraged to decide cases on the basis of the facts as they find them, and reasonable inferences drawn from those facts, rather than by any incitement to act out of passion or sympathy for or against any party."); Panchoo v. State, 185 So. 3d 562, 564 (Fla. Dist. Ct. App. 2016) ("Golden Rule arguments are improper because they depend upon inflaming the passions of the jury and inducing fear and self-interest." (citations, brackets, and internal quotations omitted)).

[1] Although this Court correctly affirmed the post-conviction relief judge's ruling denying Briggs's application for post-conviction relief, the State is currently seeking rehearing solely for the purpose of best ensuring its arguments are not waived or foreclosed in any future proceedings that potentially may occur in Briggs's case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. State v. Humphries, 354 S.C. 87, 91 n. 2, 579 S.E.2d 613, 615 n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

Importantly though, "an argument which asks the jurors to draw inferences *from the evidence* based on how a reasonable person would act if placed in the position of the victim is not an improper golden rule argument." Buszkiewic v. State, 424 P.3d 1272, 1277 (Wyo. 2018) (emphasis added). Similarly, "rhetorical questions which ask the jurors to use their common sense and life experiences to weigh the trial evidence do not violate the rules even though the prosecutor may ask the jury what they would do in similar circumstances." Id. Likewise, it does not constitute an improper "Golden Rule" argument for a solicitor to ask jurors to use their own personal experiences to evaluate the credibility of a witness, including the victim. Cf. Mines v. State, 56 A.3d 560, 575-576 (Md. Ct. Spec. App. 2012) (concluding a prosecutor's closing argument did not constitute an improper "Golden Rule" argument but, instead, was proper when it simply asked jurors to use their own experiences to evaluate the credibility of the victim's testimony, which was consistent with the trial judge's jury instructions encouraging the jurors to consider the evidence in light of their own experiences and employ common sense in evaluating it). Thus, "[n]ot all arguments that ask jurors to place themselves in a particular party's situation implicate the prohibition on golden rule arguments." State v. Diaz, 311 A.3d 714, 729 (Conn. 2024) (citation and internal quotations omitted).

In determining if an argument constitutes an improper "Golden Rule" argument, "a reviewing court should consider the purpose of the argument, the evidence that supports it, the context in which it was made, and whether it is a fair response to arguments advanced by the defense." Kitt v. State, 330 So. 3d 597, 602 (Fla. Dist. Ct. App. 2021). Critically, context matters. See United States v. Robinson, 485 U.S. 25, 33 (1988) (instructing "prosecutorial comment must be examined in context"); State v. Weaver, 361 S.C. 73, 89, 602 S.E.2d 786, 794 (Ct. App. 2004) ("In making this determination, we must examine the alleged impropriety in the

context of the entire record."). Moreover, "some latitude must necessarily be allowed" to the solicitor, and the most damaging meaning or interpretations should not be lightly drawn when evaluating the propriety of a solicitor's remarks to the jury. State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961); see Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974) (instructing courts "should not lightly infer" a jury will draw the most damaging meaning from closing argument remarks).

With those guiding principles in mind, the solicitor in Briggs's case did *not* use her closing argument to improperly appeal to the passions or prejudices of the jurors, attempt to get them to place themselves in the shoes of Briggs's victim ("Victim") at the time she was being abused, or seek for them to consider how the victim must have been feeling when she was enduring the sexual abuse at Briggs's hands. Instead, the solicitor made remarks designed to encourage the jurors to rely on their own common sense and knowledge of human nature when evaluating the credibility of *trial evidence* by considering factors that might have impacted Victim's testimony and demeanor when she was on the witness stand publicly speaking in front of a group of strangers about intimate topics during Briggs's trial. Cf. United States v. Kirvan, 997 F.2d 963, 964 (1st Cir. 1993) ("Kirvan's brief relies primarily on cases that forbid so-called 'golden rule' arguments in which plaintiffs or prosecutors ask the jury to put itself in the place of the victim. But 'golden rule' cases do not apply where, as here, the jury is asked to put itself in the place of an *eyewitness*. In this situation, the invitation is not an improper appeal to the jury to base its decision on sympathy for the victim but rather a means of asking the jury to reconstruct the situation in order to decide whether a witness' testimony is plausible." (citation omitted)); State v. Victor O., 20 A.3d 669, 688 (Conn. 2011) (concluding the prosecutor's closing arguments remarks, including ones asking the jurors "to imagine how [the victim] felt while

testifying and to consider how those feelings may have affected his demeanor during that testimony," were not inflammatory and "fell well within the limits of fair argument"); State v. Bell, 931 A.2d 198, 214-215 (Conn. 2007) ("In the present case, . . . the prosecutor was not appealing to the jurors' emotions or to their sympathies for the victim. Rather, he was asking the jurors to draw inferences from the evidence that had been presented at trial regarding the actions of the defendant and [a witness], based on the jurors' judgment of how a reasonable person would act under the specified circumstances."); Kitt v. State, 330 So. 3d 597, 603 (Fla. Dist. Ct. App. 2021) ("As the purpose of the arguments was not to urge the jury to emphasize with the children's fear, but to understand the fiancée's actions, these arguments were not improper."); State v. Wright, 216 S.W.3d 196, 201 (Mo. Ct. App. 2007) ("[H]ere the jurors were not asked to place themselves in the victim's shoes and imagine the details of the crime being committed on them. Rather, the jury was asked to imagine being the thirteen-year-old victim and being asked to testify about sexual matters in front of adult strangers. This did not suggest a personal danger to the jury or their families and thus did not constitute improper personalization . . . . Instead, it was an attempt by the prosecutor to explain to the jury why Victim appeared nervous while testifying and, in effect, made Victim's testimony more credible." (citation omitted)); Buszkiewic, 424 P.3d at 1277-1278 ("In this case, the prosecutor was not making an appeal for the jury to decide the case based upon sympathy or bias rather than the evidence. Instead, she requested that the jury consider the evidence using their life experiences and common sense. When she asked the jurors whether they would remember the number of times they had been slapped, she was requesting that they look at the evidence through the lens of their ordinary affairs. In other words, the prosecutor was simply making the point that it is human nature not to remember all of the details of a violent encounter, such as the number of slaps."). Significantly,

that distinction matters, and it should not be lightly overlooked. See Donnelly, 416 U.S. at 646-647 ("Such arguments, like all closing arguments of counsel, are seldom carefully constructed in toto before the event; improvisation frequently results in syntax left imperfect and meaning less than crystal clear. While these general observations in no way justify prosecutorial misconduct, they do suggest that a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.").

Accordingly, by presenting the closing argument she presented, the solicitor was not—contrary to this Court's determination—engaging in prohibited behavior designed to inflame the passions and prejudices of the jury but, instead, was appropriately asking the jurors through her remarks to employ and rely upon their own personal experiences and common sense[2] when evaluating the credibility and demeanor of the trial testimony presented in the courtroom. See Long, 975 A.2d at 668 (explaining it is entirely appropriate for counsel to appeal to jurors' common sense through a closing argument because jurors are expected to apply their own observations and experiences to the facts presented when deciding a case); cf. Robinson v. State, 838 S.E.2d 92 (Ga. Ct. App. 2020) (rejecting the contention the prosecutor's argument asking the jurors to think back to a traumatic experience in their own lives and consider how many details they remembered about that experience constituted an improper "Golden Rule" argument because, when viewed in context, that argument was not designed to engender sympathy for the victim but, instead, was designed to aid the jurors' consideration of the testimony presented); Finch v. Commonwealth, 681 S.W.3d 84, 98 (Ky. 2023) ("None of the foregoing statements

[2] Notably, such remarks were also fully consistent with the trial judge's jury instructions, which directed the jurors to employ their common sense to decide the case and evaluate witness credibility. (App'x p. 383; p. 392).

asked the jurors to imagine themselves or someone they care about in the position of the crime victim. They are therefore not 'golden rule' arguments, and no error occurred."). Simply put, such closing argument remarks were fair and proper, in no way constituted an improper "Golden Rule" argument, and were vastly different from the argument remarks presented in the only "Golden Rule" argument decision this Court relied upon when deciding Briggs's appeal.[3] See State v. Busse, 439 S.C. 104, 111, 886 S.E.2d 208, 212 (2023) ("[A] prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer.").

For all the foregoing reasons coupled with the reasons articulated in the State's brief, the State respectfully requests this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules. Upon doing so, this Court—for the reasons articulated—should vacate its prior opinion, issue a new opinion, and correctly affirm the PCR judge's ruling in total without finding either defense counsel's performance was deficient or the solicitor's closing argument was improper.

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[3] The portion of the closing argument found to be improper in State v. Harris, 382 S.C. 107, 120, 674 S.E.2d 532, 539 (Ct. App. 2009)—the lone "Golden Rule" argument decision relied upon by this Court in deciding Briggs's case—consisted of the following remarks:

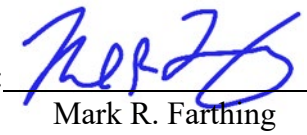
> Harris had to fire twice and Harris is not sure when he shot Pierre which hand he had the gun in but when he shot accidentally he said, well, I'm right handed. I had it in here. I think he had it in his coat pocket. So as he's got him, got Harris running down the stairs. He gets his gun out, ran and shoots twice . . . . Now, they can't get around this and if y'all believe this, don't leave this jury room, don't leave this jury box and he charges you and just let him go right now. Just let him go.

(brackets omitted). Significantly, those particular remarks from Harris bore no similarities whatsoever to the closing arguments remarks this Court found to be problematic in Briggs's case, and this Court appears to have potentially overlooked that fact when relying upon Harris to find error with the solicitor's striking-different closing argument in the case at bar. (App'x pp. 348-350).

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

By: 
Mark R. Farthing
S.C. Bar Number 76901

April 7, 2026

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000551

ANTHONY BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Respondent's Petition for Rehearing on Petitioner by sending an electronic copy via email to the address listed in AIS for the following individual:

Sarah E. Shipe, Esquire
S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify all parties required by Rule to be served have been served.
This 7th day of April, 2026.

Grace Sommer

GRACE SOMMER
Legal Assistant
Office of the Attorney General

The South Carolina Court of Appeals

Anthony Briggs, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2023-000551

ORDER

After careful consideration of the petitions for rehearing filed by both parties, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

John D. Kesler J.

Blake L. Hewitt J.

Kristi Curtis J.

Columbia, South Carolina

cc:
Sarah Elizabeth Shipe, Esquire
Mark Reynolds Farthing, Esquire
The Honorable Brian M. Gibbons

FILED
May 20 2026