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Aug 14 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Jennifer B. McCoy, Circuit Court Judge
Appellate Case No. 2026-001581

THE STATE,

Respondent-Petitioner,

vs.

MARCUS ALEXANDER WIGFALL,

Petitioner-Respondent.

**THE STATE'S
PETITION FOR WRIT OF CERTIORARI**

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STATEMENT OF ISSUE ON CERTIORARI

Was the published decision of the Court of Appeals reversing Wigfall's convictions wrong and in need of correction when: (1) contrary to the inaccurate conclusion reached by the majority, no portion of the forensic interviewer's brief testimony—including the limited objected-to portion—improperly bolstered or vouched for the minor victim; and (2) any conceivable error in the admission of the challenged testimony was harmless under the circumstances involved even assuming it had somehow been improper?

STATEMENT OF THE CASE

Procedural History

In July of 2020, Petitioner-Respondent Marcus Alexander Wigfall was arrested following an investigation into allegations he sexually abused a minor child multiple times over a span of roughly three years. In April of 2021, the Charleston County Grand Jury indicted Wigfall for two counts of second-degree criminal sexual conduct with a minor, one count of third-degree criminal sexual conduct with a minor, and one count of contributing to the delinquency of a minor. On February 6, 2023, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Jennifer B. McCoy, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Wigfall of third-degree criminal sexual conduct with a minor and contributing to the delinquency of a minor while acquitting him of the two second-degree criminal sexual conduct with a minor charges. Following the verdict, the trial judge sentenced Wigfall to an aggregate fifteen-year term of imprisonment, which was suspended to a twelve-year term of imprisonment to be followed by five years of probation. Wigfall then timely filed and perfected an appeal.

On appeal, a two-judge majority of the Court of Appeals—following briefing and oral argument—reversed Wigfall’s convictions through a divided published opinion. State v. Wigfall, 448 S.C. 116, 930 S.E.2d 314 (Ct. App. 2026). Thereafter, both the State and Wigfall timely filed petitions for rehearing. Through an order issued on June 17, 2026, a majority of the Court of Appeals denied both petitions while the dissenting judge indicated she would have granted the State’s petition.

Factual History

During Wigfall’s trial for the indicted offenses, Alix Desch, a forensic interviewer at the Dee Norton Child Advocacy Center, testified as the sixth of nine total prosecution witnesses.¹ (App’x p. 230). In her brief testimony consisting of just four transcript pages of direct examination and two transcript pages of cross-examination, Desch explained—without objection—she “aid[s] law enforcement in interviewing victims” as part of her job and saw the minor victim (“Victim”) “in that capacity” on June 18, 2020, and again on June 23, 2020, after her mother (“Mother”) brought her in to be interviewed. (App’x pp. 231-232). Desch further explained—again without objection—she conducts such interviews in a one-on-one capacity while “our law enforcement partners are able to live observe through closed-caption television” from outside the interview room. (App’x p. 232).

Following that, Desch—in a manner fully consistent with the mandates of Rule 801(d)(1)(D) of the South Carolina Rules of Evidence—testified Victim made a disclosure of being sexually assaulted to her and reported the abuse began when she was approximately thirteen years old, occurred multiple times since then, and was perpetrated either in her bedroom or Mother’s bedroom. (App’x pp. 232-233). Defense counsel objected to that proper time-and-place-limited testimony on the basis it was purportedly “cumulative” and “bolstering of the other witnesses and everything,” but the trial judge correctly overruled that objection and allowed the testimony “as phrased.” (App’x pp. 232-233).

The solicitor then asked Desch if she “ma[d]e any referrals *to [Victim]*,” defense counsel objected on the ground of “vouching,” and the trial judge overruled that objection, too. (App’x

¹ Wigfall personally elected not to testify and the defense called no other witnesses, so the nine prosecution witnesses were the only witnesses who testified before the jury during Wigfall’s trial. (App’x p. 320; p. 324).

p. 233) (emphasis added). At that point, Desch provided the following testimony that was subsequently found on appeal to be problematic by a two-judge majority of the Court of Appeals:

At Dee Norton, we a make standard recommendation for every child that comes to our center to have their case staffed with our multidisciplinary team so that we can all convene and discuss with the investigators what's going on, as well as referring for a mental-health assessment to see if any ongoing support or treatment is needed after an initial consult.

(App'x pp. 233-234) (emphasis added). After that testimony about the “pretty standard” things done every single time a forensic interview of a child is conducted at the center, Desch confirmed on cross-examination she obtained some background information from Mother, Mother reported she had not personally witnessed the sexual abuse that had been disclosed, and Victim identified Mother as the “Number 1 person” she considered to be a safe person to whom she could go. (App'x pp. 234-235). That was the full scope of Desch's permitted testimony before the jury. (App'x pp. 230-235).

Aside from Desch's limited testimony in that regard, Victim personally testified at length during the trial and recounted with specificity the details of the acts of sexual abuse she suffered at the hands of Wigfall, who was Mother's former live-in boyfriend, over the years. (App'x pp. 107-162). She further confirmed she spoke about the abuse with a friend, with Mother, “briefly” with a police officer, at the Dee Norton Center on two separate occasions, and with a detective. (App'x pp. 112-115; pp. 127-129; p. 139; p. 148). Likewise, Victim testified Wigfall provided her with marijuana and had her smoke it, including out of a gas mask connected to a bong, during the period he was sexually abusing her.² (App'x p. 118; p. 125). Along with that

² Wigfall's provision of marijuana to Victim was the basis for the contributing to the delinquency of a minor charge. (App'x p. 102; p. 316).

testimony, screenshots of text messages³ from Wigfall were introduced to corroborate what Victim had recounted about how Wigfall would summon her for the sexual abuse. (App’x pp. 139-143).

In addition to that, Mother offered lengthy testimony about the events that led up to Wigfall’s arrest and charges. (App’x pp. 183-222). More specifically, she recounted Victim, who was crying and upset at the time, disclosed to her on June 8, 2020, she had been sexually assaulted over the course of the preceding three years in either her bedroom or Mother’s bedroom. (App’x p. 186; p. 189). After the disclosure, Mother indicated the police were eventually contacted, an officer spoke with Victim, Victim was referred for an interview by law enforcement, and she personally took Victim to it. (App’x pp. 197-198). Mother also discussed other unusual occurrences, such as her finding Wigfall and Victim in her bedroom upon returning from work one day, along with the odd manner in which Wigfall responded to being confronted about the allegations, including by admitting he had seen the minor Victim naked in the past but “just couldn’t do it”—whatever “it”⁴ may be—when he did. (App’x p. 188; pp. 190-192). Beyond that, Mother—in response to defense counsel’s questioning—testified Wigfall “did it,” asserted Victim never lied about anyone touching her, and affirmed Wigfall “still touched [her] daughter.” (App’x pp. 215-216; p. 222).

Along with Mother’s testimony, Victim’s twin brother (“Brother”) testified about his own observations during the time the abuse was reported to have being taking place and confirmed he

³ One of the text messages Wigfall sent directed the minor victim to “[c]um here plz.” (App’x p. 393) (emphasis added). Notably, similar phrasing has been recognized by a federal appellate court as being “a deliberate misspelling intended to be sexual.” Hayes v. Clariant Plastics & Coatings USA, Inc., 144 F.4th 850, 862 (6th Cir. 2025).

⁴ Mother testified she attempted to get Wigfall to explain that statement and he responded by shutting down and promptly leaving the room. (App’x pp. 191-192).

never personally witnessed anything inappropriate occur between Victim and Wigfall. (App’x p. 164; p. 166; p. 171). However, he further explained he frequently spent time in his own room with the door closed and confirmed he had both seen a gas mask in their home and witnessed Wigfall smoking marijuana. (App’x pp. 166-167; p. 169).

Additionally, Ivy Grinnage, who a close friend of Victim’s, testified—without objection—Victim revealed to her at school in the fall or winter of 2019 she had been sexually assaulted at her house and it “had been happening for a while.” (App’x pp. 174-176; p. 179). Grinnage also reported she heard a male voice in the background one night when she was speaking with Victim over the phone and, at that point, Victim’s “entire mood changed” and Victim abruptly ended the call. (App’x p. 177).

Furthermore, Officer Nikolas Perez from the Charleston Police Department confirmed he responded to a report of a sexual assault of a juvenile on June 11, 2020, and conducted a “basic” interview of Victim after arriving at the scene. (App’x pp. 223-227). In response to defense counsel’s questioning, Officer Perez also revealed Victim reported she had touched “his” penis with her hand, stated oral sex had occurred as well, and described the sexual abuse as occurring approximately two times per week over the span of roughly three years. (App’x p. 229).

Likewise, Detective Michael Christophersen, who worked in the Charleston Police Department’s special victims unit, recounted he was assigned to investigate Wigfall’s case on June 16, 2020, which was two days *before* Desch’s first interview with Victim. (App’x p. 231; p. 239). After being assigned to the case, Detective Christophersen testified he began by: (1) referring the matter to the Department of Social Services as a “mandated reporter”; and (2) referring Victim to the Dee Norton Child Advocacy Center for a forensic interview, which he explained—without objection—was consistent with both agency policy and “best practices.”

(App’x p. 239). He further explained he observed the interviews, briefly spoke with Victim after the second one, and obtained screenshots from him of the text messages he was able to review on her phone. (App’x pp. 240-242). After that, Detective Christophersen indicated he arranged a meeting with Wigfall, interviewed him along with his supervisor on June 23, 2020, and obtained arrest warrants for Wigfall six days later, which led to Wigfall’s arrest on July 2, 2020. (App’x pp. 248-250). Notably, Detective Christophersen also confirmed Wigfall candidly admitted during the recorded⁵ law enforcement interview he gave marijuana to Victim⁶ and also reported he would not want to engage in oral sex with Victim because *it would make him want to have sexual intercourse with her* as opposed to because she was a minor child. (App’x p. 262).

Finally, expert testimony was presented from two witnesses: (1) Stephanie Peterson, a pediatric sexual assault nurse examiner; and (2) Dr. Carole Swiecicki, an expert in child sexual abuse dynamics. (App’x p. 272; pp. 290-291). Through her testimony, Peterson discussed her examination of Victim on June 18, 2020, explained her findings were normal, and confirmed such findings were “expected” and in no way ruled out sexual contact had occurred. (App’x pp. 274-277; p. 283). Through hers, Dr. Swiecicki, who had no personal involvement with or knowledge of Wigfall’s case, explained delayed disclosures by victims in sexual abuse cases were common and also discussed how offenders employed grooming as a “desensitizing process.” (App’x pp. 292-296; p. 298; p. 300).

After all the testimony and evidence was presented, the parties rested their cases and presented their closing arguments to the jury. (App’x p. 311; pp. 324-352). During the State’s, the solicitor only briefly referenced Desch’s testimony in the following manner: “You heard

⁵ That recording was introduced into evidence and played for the jury. (App’x pp. 250-251).

⁶ Again, Wigfall’s *self-admitted* provision of marijuana to Victim was the basis for the charge of contributing to the delinquency of a minor. (App’x p. 102; p. 316).

from Alix Desch, the interviewer at the advocacy center, that [Victim] did make a disclosure to her.” (App’x p. 334). Meanwhile, the solicitor never at any point suggested Desch’s testimony could or should be construed as evidence Desch—or anyone else—believed the victim and never argued to the jurors they should base their verdict on anyone’s opinion about Victim’s credibility other than their own. (App’x pp. 325-337). Contrastingly, during her closing argument, defense counsel attacked the State’s case on a variety of different grounds, including by suggesting to the jury Mother would have testified differently at trial had she not believed she had been scorned by Wigfall. (App’x pp. 337-352). However, defense counsel did concede Wigfall admitted he gave marijuana to Victim when she was a minor. (App’x p. 347).

Following that, the trial judge thoroughly instructed the jurors on the applicable law and, in doing so, stressed they were the exclusive judges of the facts. (App’x pp. 352-364). Thereafter, the case was submitted to the jury, and, after a little under six hours of deliberations, the jury convicted Wigfall of third-degree criminal sexual conduct with a minor and contributing to the delinquency of a minor while acquitting him of the two second-degree criminal sexual conduct with a minor charges. (App’x pp. 377-378). Wigfall then appealed, arguing the trial judge reversibly erred by admitting: (1) testimony “the forensic interviewer recommended that the case be staffed with law enforcement and that [Victim] receive a mental health assessment”; and (2) evidence Victim received counseling after disclosing the abuse. (App’x pp. 401-419).

Through a divided published decision issued on March 11, 2026, a two-judge majority of the Court of Appeals reversed Wigfall’s convictions and aggregate sentence on appeal. State v. Wigfall, 448 S.C. 116, 930 S.E.2d 314 (Ct. App. 2026). In doing so, the majority concluded Desch’s testimony she “recommended the case be staffed with law enforcement” after interviewing Victim constituted improper bolstering of Victim’s testimony because: (1) it

“reference[d] the investigatory purpose [this Court] has explained should not be mentioned to the jury—the forensic interviewer’s purpose to allow law enforcement to decide whether to conduct a criminal investigation”; and (2) the testimony purportedly had no allowable purpose, “particularly when [Desch] was not introducing the video recording of the interview.” Id. at 135-136, 930 S.E.2d at 324-325. Furthermore, the majority concluded the error in the admission of that testimony—which was only a portion of an answer spanning a mere seven lines of the nearly-four-hundred-page transcript from the three-day trial—“cannot be harmless when this case turns on [Victim]’s credibility.” Id. at 145, 930 S.E.2d at 329. However, although it found the admission of Desch’s testimony “about law enforcement involvement” constituted reversible error, the majority rejected Wigfall’s additional contention that other portions of Victim’s and Desch’s testimony constituted improper bolstering. Id. at 139-140, 930 S.E.2d at 326-327.

Meanwhile, a lone judge concurred in part and dissented in part. Id. Specifically, while she concurred with the majority’s conclusion the challenged portions of Victim’s and Desch’s testimony related to counseling did not constitute improper bolstering, the dissenting judge noted Desch did not actually testify she “recommended the case be staffed with law enforcement” as had been “recognized” by the majority. Id. at 145, 930 S.E.2d at 329. Instead, the dissenting judge explained the objected-to portion of Desch’s limited testimony simply “referenced ‘the standard recommendation for every child that comes to [the] center.’ ” Id. at 146-147, 930 S.E.2d at 330. In the dissenting judge’s view, such testimony “was neither improper bolstering nor improper vouching.” Id. at 147, 930 S.E.2d at 330. Furthermore, the dissenting judge explained she saw *nothing* in Desch’s testimony “which necessarily conveyed to the jury that the interviewer and law enforcement believed the victim and that their beliefs led to the defendant’s arrest, these charges, and this trial, thus impermissibly bolstering the minor’s credibility.” Id. at

148, 930 S.E.2d at 331 (citations, brackets, and internal quotations omitted). For those reasons, the dissenting judge—who aptly characterized the trial as “exceptionally well-run”—disagreed with the majority’s decision to reverse Wigfall’s convictions. Id.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing a trial judge’s evidentiary ruling on appeal, an appellate court will not reverse absent a clear abuse of discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) (“The appellate court reviews a trial judge’s ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court.”); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) (“A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.”); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) (“[D]eference is due to the trial court’s admission of the evidence.”). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted).

ARGUMENT

The published decision of the Court of Appeals reversing Wigfall’s convictions was wrong and needs to be corrected because: (1) contrary to the inaccurate conclusion reached by the majority, no portion of the forensic interviewer’s brief testimony—including the limited objected-to portion—improperly bolstered or vouched for the minor victim; and (2) any conceivable error in the admission of the challenged testimony was harmless under the circumstances involved even assuming it had somehow been improper.

Fundamentally, in our criminal justice system, the assessment of witness credibility falls “within the exclusive province of the jury.” State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); see State v. Pruitt, 187 S.C. 58, ___, 196 S.E. 371, 373 (1938) (explaining the jury is the *sole* judge of the facts); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) (“The task of determining the weight of the evidence lies within the exclusive province of the jury.”). Based on that, witnesses are generally prohibited from vouching for or bolstering the testimony of another witness. McKerley, 397 S.C. at 464, 725 S.E.2d at 141; see Briggs v. State, 421 S.C. 316, 328, 806 S.E.2d 713, 719 (2017) (reaffirming the existence of the “the longstanding rule that no one may invade the province of the jury”). Improper vouching occurs when—amongst other things—someone makes an explicit personal assurance of a witness’s veracity. State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). Meanwhile, improper bolstering occurs when a witness is permitted to offer an opinion as to whether another witness is telling the truth. State v. Taylor, 404 S.C. 506, 514, 745 S.E.2d 124, 128 (Ct. App. 2013). Accordingly, pursuant to South Carolina law, no witness is ordinarily permitted to “give an opinion for the purpose of conveying to the jury—directly or indirectly—that [the witness] believes” another witness, including a victim in a criminal case. Briggs, 421 S.C. at 324, 806 S.E.2d at 717; see State v. Smith, 411 S.C. 161, 170, 767 S.E.2d 212, 217 (Ct. App. 2014) (“[A] a witness may not give an opinion on whether he or she believes another witness is telling the truth or comment on another witness’ veracity.”).

With those principles in mind, this Court was confronted with a claim of improper bolstering in State v. Makins, 433 S.C. 494, 496, 860 S.E.2d 666, 667-668 (2021). In that particular case, Makins was charged with a variety of offenses, including third-degree criminal sexual conduct with a minor, after he was accused of sexually abusing a child. Id. During trial, Kristin Rich, a childhood trauma therapist who treated the victim after the allegations arose, testified for the State “both as an expert in the treatment of child trauma and child sexual abuse dynamics and as [the victim]’s treating therapist.” Id. at 496-497, 860 S.E.2d at 668. As part of her testimony, Rich—over defense counsel’s objection—affirmed she provided therapy to the victim involved in Makins’s case. Id. at 498, 860 S.E.2d at 669. Ultimately, Makins was convicted of third-degree criminal sexual conduct with a minor and appealed. Id. at 496, 860 S.E.2d at 667-668. On appeal, the Court of Appeals reversed, finding “Rich’s opinion testimony addressing the various manifestations of child sexual abuse, followed immediately by her affirmative response that she treated [the v]ictim, implied she believed [the v]ictim was telling the truth with respect to her allegations of sexual abuse.” State v. Makins, 428 S.C. 440, 448-449, 835 S.E.2d 532, 537 (Ct. App. 2019). However, this Court subsequently granted the State’s petition for a writ of certiorari and reversed the decision of the Court of Appeals. Makins, 433 S.C. at 505, 860 S.E.2d at 672. In reversing, this Court concluded the holding of the Court of Appeals concerning bolstering was “too broad” and, contrary to that holding, no discernible improper bolstering truly occurred in Makins’s case. Id. at 504-505, 860 S.E.2d at 671-672. Furthermore, this Court instructed: “To suggest Rich’s simple affirmation that she provided therapy to [the victim] can singularly constitute improper bolstering is a bridge too far.” Id. at 503, 860 S.E.2d at 671.

In Wigfall’s case, the Court of Appeals was confronted with a claim of improper bolstering similar to the one raised in Makins. Upon analyzing the testimony challenged during Wigfall’s trial, the dissenting judge correctly found nothing in it could have reasonably been construed as constituting improper bolstering or vouching. However, a majority of the Court of Appeals concluded otherwise and found the trial judge committed a reversible abuse of discretion by allowing the admission of the following limited testimony from the forensic interviewer who interviewed Victim after she disclosed the sexual abuse:

At Dee Norton, we a make standard recommendation for every child that comes to our center to have their case staffed with our multidisciplinary team so that we can all convene and discuss with the investigators what’s going on, as well as referring for a mental-health assessment to see if any ongoing support or treatment is needed after an initial consult.

(App’x pp. 233-234) (emphasis added). In the majority’s view, Desch’s statement indicating her “standard recommendation” in every single case involved staffing it and discussing it with investigators constituted improper bolstering because it purportedly referenced “the investigatory purpose [this Court] has explained should not be mentioned to the jury—the forensic interviewer’s purpose to allow law enforcement to decide whether to conduct a criminal investigation.” Wigfall, 448 S.C. at 135, 930 S.E.2d at 324. Respectfully, just as was true in Makins, the majority’s conclusion in that regard yet again constituted a “bridge too far” and was wrong for multiple reasons. Makins, 433 S.C. at 503, 860 S.E.2d at 671.

First, to the extent the majority interpreted Desch’s testimony to mean she “recommended the case be staffed by law enforcement,” that conclusion appeared to be based on a fundamental misunderstanding or misconstruction of the actual substance of Desch’s testimony. When looking to the challenged portion of Desch’s brief testimony during the multi-day trial, that testimony simply conveyed, as a matter of standard practice applicable *in every*

single case, she: (1) always referred each case to the multi-disciplinary team so the team could meet about it; and (2) always referred each child for a mental health assessment to see “if” any ongoing support or treatment was needed. Significantly, in providing that answer about the center’s standard—as opposed to case-specific—practices, Desch *never* at any point suggested she or anyone else at the center was empowered to offer opinions to law enforcement on whether a case should be “staffed” by law enforcement for a criminal investigation, certainly never suggested she offered such an opinion to law enforcement in Victim’s specific case, and in no way intimated her own role or purpose was to allow law enforcement to determine whether a criminal investigation was warranted. See State v. Anderson, 413 S.C. 212, 221, 776 S.E.2d 76, 80 (2015) (“There is to be no testimony to such things as . . . the purpose of the interview is to allow law enforcement to determine whether a criminal investigation is warranted.”). Moreover, since the portion of her testimony regarding the referral for a mental health assessment was specifically qualified with an “if,” Desch clearly communicated to the jury the standard referrals she made were not based on a determination on her part as the truth or falsity of any disclosures made to her. Cf. Smith, 411 S.C. at 172, 767 S.E.2d at 218 (“[W]e find the redirect testimony did not improperly bolster the victim because [the witness] qualified his initial response and never gave an opinion regarding whether the victim was telling the truth.”). Beyond that, Wigfall’s case—as Desch was well aware at the time of her interviews with Victim and the jury would have likewise been well aware based on all the testimony that had already been presented during trial prior to Desch’s testimony—was *already* “staffed by law enforcement” before Desch ever met with or spoke with Victim since a criminal investigation was clearly actively underway by that point, and, based on the other testimony presented, that investigation obviously continued after Desch completed the second of her interviews with Victim. Indeed, as Detective

Christophersen’s testimony made clear, he did not obtain arrest warrants for Wigfall until June 29, 2020—six days after Desch’s last interview with Victim and six days after the detective interviewed Wigfall himself. Under such circumstances, Desch’s testimony did not—contrary to the view of a majority of the Court of Appeals—constitute a statement she “recommended the case be staffed with law enforcement,” and the jury could not logically have construed it as such, particularly when they were never asked to by the solicitor or anyone else. Cf. Thompson v. State, 423 S.C. 235, 243, 814 S.E.2d 487, 491 (2018) (“The testimony most certainly served to directly enhance the credibility of Victim. Indeed, while urging the jury to conclude Victim was credible, the State on three occasions during its closing argument cited Dr. Benedetto’s finding that Victim’s account of sexual abuse was among the most compelling she had encountered in her one thousand child interviews.”).

Second and relatedly, since Desch’s testimony could not have been construed as conveying—either directly or indirectly—any of her own personal opinions about Victim’s credibility, that testimony simply did not constitute improper bolstering or vouching despite what the majority inaccurately found. See Chappell v. State, 429 S.C. 68, 75, 837 S.E.2d 496, 500 (Ct. App. 2019) (instructing testimony does not improperly bolster when the witness gives no indication about the victim’s veracity). Critically, when given a logical and fair construction, the challenged portion of Desch’s testimony could not reasonably have been construed by the jury as suggesting she personally harbored any opinions on the credibility of Victim’s disclosures or had any personal involvement in steering the investigative decisions made by law enforcement in Wigfall’s case, which makes it far different than the type of testimony that has traditionally been found to constitute improper bolstering in our state. See, e.g., Makins, 433 S.C. at 502, 860 S.E.2d at 671 (“Rich’s simple affirmation she provided therapy to Minor . . . differs from

previous indirect vouching cases in which expert testimony was more extensive.”); Thompson, 423 S.C. at 242-243, 814 S.E.2d at 490-491 (finding a forensic interviewer “unmistakably conveyed to the jury her belief that Victim was telling the truth about the abuse” by stating the victim’s disclosure was ruled compelling for abuse and was one of the most compelling interviews she had ever personally conducted); Briggs, 421 S.C. at 328-329, 806 S.E.2d at 720 (concluding a forensic interview’s testimony constituted improper bolstering when she testified her role was to determine whether a child knows the difference between the truth and a lie, to find out if something happened, and to figure out what occurred); State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015) (concluding a witness’s testimony constituted improper bolstering when the witness—a forensic interviewer—testified she recommended Chavis not be around the victim for any reason, which could only have been interpreted as suggesting the witness believed the victim’s claim of sexual abuse); State v. Kromah, 401 S.C. 340, 358-359, 737 S.E.2d 490, 500 (2013) (instructing a witness should—in order to avoid offering an opinion “about the credibility of a child victim in a sexual abuse matter”—avoid stating “the child was told to be truthful;” offering “a direct opinion as to the child’s veracity or tendency to tell the truth;” making “any statement that indirectly vouches for the child’s believability, such as stating the interviewer has made a ‘compelling finding’ of abuse;” making “any statement to indicate to a jury that the interviewer believes the child’s allegations in the current matter;” or offering “an opinion that the child’s behavior indicated the child was telling the truth”); McKerley, 397 S.C. at 465-466, 725 S.E.2d at 142 (finding a forensic interviewer’s testimony to be improper where the interviewer testified about giving an opinion as to whether something happened and about consistent information and compelling findings); State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (Ct. App. 2011) (finding a forensic interviewer’s testimony constituted improper

vouching where the interviewer testified the victims provided compelling disclosures of abuse by Jennings and provided details consistent with the background information provided by the victims' mother, the police report, and other children). And, Desch's brief testimony did indeed serve a legitimate purpose during trial because Desch was able to and did provide proper time-and-place-limited testimony regarding Victim's disclosures to her of the sexual abuse. Rule 801(d)(1)(D), SCRE; see State v. Barrett, 299 S.C. 485, 486-487, 386 S.E.2d 242, 243 (1989) ("When the victim testifies, evidence from other witnesses that she complained of the sexual assault is admissible as corroboration of the incident; however, the evidence must be limited to the time and place of the assault, and may not include particulars or details."); State v. Jolly, 304 S.C. 34, 37, 402 S.E.2d 895, 897 (Ct. App. 1991) ("[W]here the victim in a criminal sexual conduct case testifies[,] . . . evidence that the victim previously complained of the assault is admissible; provided, however, that the evidence must be limited to the time and place of the assault, and may not include particulars or details." (citation and internal quotations omitted)); see also Briggs, 421 S.C. at 325, 806 S.E.2d at 718 (recognizing it constitutes improper bolstering when "a forensic interviewer gives testimony that indicates the witness believes the victim, *but does not serve some other valid purpose*" (emphasis added)). Therefore, Desch's challenged testimony did not improperly bolster or vouch for Victim's testimony, and, respectfully, the majority was flatly wrong in finding that it did. See Chappell, 429 S.C. at 77, 837 S.E.2d at 501 (explaining the testimony of a witness constitutes improper bolstering "if (1) the witness directly states an opinion about the victim's credibility, (2) the sole purpose of the testimony is to convey the witness's opinion about the victim's credibility, or (3) there is no way to interpret the testimony other than to mean the witness believes the victim is telling the truth"); cf. State v. Hill, 394 S.C. 280, 295, 715 S.E.2d 368, 376-377 (Ct. App. 2011) ("[T]he forensic

interviewer never addressed the veracity of Victim. . . . He gave no opinion on whether Victim was being truthful, or even that Victim had not, in fact, been coached. Accordingly, we find no reversible error in the admission of this testimony.” (footnote omitted)), overruled on other grounds by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

Third, even assuming the majority was somehow correct and the trial judge did actually abuse her broad discretion by admitting the challenged portion of Desch’s testimony, the Court of Appeals was wrong to find that limited testimony’s admission was harmful when viewing it in relation to everything else presented during Wigfall’s trial. Here, the challenged portion of Desch’s testimony constituted only a few lines of testimony in the multi-day trial, and it was focused entirely—as the majority appeared to have correctly recognized—on the center’s standard practices followed in each and every case as opposed to being focused on anything case-specific to Victim. Moreover, it came after *unobjected-to* testimony from Desch explaining she “aid[s] law enforcement in interviewing victims” as part of her role as a forensic interviewer and was involved in the matter “in that capacity.” See State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) (recognizing as “well settled” evidence being cumulative in nature to other evidence can render issues related to that evidence harmless beyond a reasonable doubt). Beyond that, the jury heard lengthy testimony from numerous other witnesses, including Victim herself, and was presented with other probative evidence, including the recording containing Wigfall’s own bizarre explanation as to why he purportedly did not perform oral sex on his minor victim. Considering the limited and non-case-specific nature of the challenged portion of Desch’s testimony coupled with the nature of all the other testimony and evidence presented, that limited testimony simply could not have had any impact on the outcome of Wigfall’s case even assuming its admission was somehow problematic. Cf. Jolly, 304 S.C. at 38, 402 S.E.2d at 897

(concluding any error in the admission of a social worker’s testimony about a prior disclosure that exceeded the time and place limitation was harmless when the offending testimony “consisted of no more than five lines in the trial transcript,” it was cumulative to the testimony from the victim and one other witness, and the jurors were able to personally see and hear the victim when she testified on direct examination and cross-examination). Therefore, any error in the admission of the challenged portion of Desch’s testimony was harmless under the specific circumstances involved in Wigfall’s case, and, resultantly, the majority was wrong to reverse Wigfall’s conviction regardless of whether it was right or wrong in finding improper bolstering occurred. See State v. Pickrell, 443 S.C. 497, 504, 905 S.E.2d 374, 377 (2024) (“Some errors—when considered in the context of the facts of a particular case—are so insignificant and inconsequential they do not require reversal of a conviction.” (citations and internal quotations omitted)); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (recognizing the harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole); State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”).

Fourth and finally, the majority also erred by failing to conduct its harmless error analysis in a charge-specific manner. Instead of doing so, the majority simply found the error it believed occurred could not be harmless “when this case turns on [Victim]’s credibility” before reversing both Wigfall’s distinct convictions. However, while Wigfall’s guilt for the third-degree criminal sexual conduct with a minor charge did largely hinge on the credibility of Victim’s testimony, Wigfall’s guilt for the contributing to the delinquency of a minor charge hinged more so on his *own* statements than Victim’s. That is true because that particular charge was based on Wigfall’s

provision of marijuana to his minor victim, which was the something the jurors heard *Wigfall himself* candidly admit he had done through the introduction of his pre-arrest statements to law enforcement. See Arizona v. Fulminante, 499 U.S. 279, 296 (1991) (“A confession is like no other evidence. Indeed, the defendant’s own confession is probably the most probative and damaging evidence that can be admitted against him. The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.” (citations, internal quotations, brackets, and ellipses omitted)). In light of that, the facts establishing Wigfall’s guilt for the contributing to the delinquency with a minor charge were not really in dispute during trial, and, indeed, defense counsel readily conceded to the jurors Wigfall had personally admitted he provided marijuana to Victim.⁷ Under such circumstances, the admission of Desch’s limited testimony—even assuming it was truly problematic, which it was not—could not have had any impact on the jury’s verdict as far as the contributing to a delinquency of a minor charge was concerned since Wigfall’s own admissions established his guilt for that offense regardless of Victim’s overall credibility or believability. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (explaining “[t]he circumstances of each individual case are to be considered”

⁷ After making that concession, defense counsel seemed to attempt to nevertheless defend Wigfall’s criminal actions in that regard by contending “[a] lot of people simply don’t consider marijuana that bad” and suggesting Wigfall “thought he was helping [Victim] out” by giving the illegal drug to the child. (App’x p. 347). Thus, defense counsel’s arguments to the jury as to the contributing to the delinquency of a minor charge appeared to amount to a request for jury nullification, which was not an appropriate argument to make. See, e.g., United States v. Muse, 83 F.3d 672, 677 (4th Cir. 1996) (“Although a jury is entitled to acquit on any ground, a defendant is not entitled to inform the jury that it can acquit him on grounds other than the facts in evidence, i.e. a jury has the power of nullification but defense counsel is not entitled to urge the jury to exercise this power. If defense counsel attempts to do so, the trial court may make an appropriate corrective instruction[.]” (citation and footnote omitted)).

when conducting a harmless error analysis); cf. Tyler v. State, 437 S.C. 17, 35, 876 S.E.2d 132, 141 (Ct. App. 2022) (reversing some—but not all of Tyler’s convictions—after finding the specific error that occurred was prejudicial to only some of the charges). Therefore, at a bare minimum, the Court of Appeals wrongly reversed Wigfall’s contributing to the delinquency of a minor conviction. Cf. Tyler, 437 S.C. at 35, 876 S.E.2d at 141 (“[A]s the computer photographs were properly admitted as to the sexual exploitation charge, we affirm Tyler’s conviction for second-degree sexual exploitation of a minor.”).

For all those reasons, the majority of the Court of Appeals was—particularly in light of the applicable deferential standard of review—wrong in finding the trial judge abused her discretion by allowing the admission of Desch’s brief testimony, which did not constitute improper bolstering, and was likewise wrong in finding reversal of all Wigfall’s convictions was warranted under the circumstances involved. See Makins, 433 S.C. at 501, 860 S.E.2d at 670 (“If the standard of review were de novo, an appellate court could simply rule on the evidentiary and mistrial issues in accordance with its own view of the dynamic faced by the trial court. However, under the deferential standard applicable here, an appellate court cannot disturb the trial court’s rulings unless they lacked evidentiary support or were controlled by an error of law.”); Torres, 390 S.C. at 625, 703 S.E.2d at 230 (instructing an appellate court must give great deference to a trial judge’s evidentiary rulings on appeal); State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (“Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial.”). The State’s petition for a writ of certiorari should be granted, the erroneous precedential decision of the Court of Appeals should be reversed, and Wigfall’s convictions should ultimately be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the State's petition for a writ of certiorari should be granted. In requesting this relief, counsel for the State certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT-PETITIONER

August 14, 2026

RECEIVED

Aug 14 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Jennifer B. McCoy, Circuit Court Judge
Appellate Case No. 2026-001581

THE STATE,

Respondent-Petitioner,

vs.

MARCUS ALEXANDER WIGFALL,

Petitioner-Respondent.

PROOF OF SERVICE

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

Joanna K. Delany, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify all parties required by Rule to be served have been served.
This 14th day of August, 2026.



GRACE SOMMER
Administrative Support Manager
Office of the Attorney General