

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Charleston County
Jennifer B. McCoy, Circuit Court Judge

THE STATE,

Respondent-Petitioner

V.

MARCUS ALEXANDER WIGFALL,

Petitioner-Respondent

Opinion No. 6140 (S.C. Ct. App. filed March 11, 2026)

APPELLATE CASE NO. 2026-001581

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

JOANNA K. DELANY
Appellate Defender

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

ATTORNEY FOR RESPONDENT

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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?

COUNTERSTATEMENT OF THE ISSUE

Whether the Court of Appeals correctly held the trial court erred in admitting the forensic interviewer's testimony that upon twice interviewing the minor about the alleged abuse, she referred the case be staffed with law enforcement, where the testimony had no permissible purpose, since a forensic interviewer's testimony about her investigatory role impermissibly bolsters or vouches for a complainant's credibility; and whether the Court of Appeals correctly found the error required reversal where the case turned on the credibility of the minor?

STATEMENT OF THE CASE

In June of 2020, Minor 1, who was approximately seventeen years old, told her mother that she had been sexually abused by her mother's boyfriend, Petitioner-Respondent Marcus Wigfall. Wigfall had been living with Minor 1, her twin brother (Minor 2), and their mother (Mother), since 2015. App. 183, l. 12 – 186, l. 22.¹ Minor 1 told Mother the abuse happened approximately two or three times every couple of weeks for the last three years. App. 189, ll. 17-21; App. 153, ll. 15-19. Minor 1 alleged Wigfall once placed her hand on his crotch over his pants so that she felt his penis. Minor 1 further alleged that on multiple occasions Wigfall performed oral sex on her and attempted to penetrate her vagina but it was “closed.” Minor 1 also said Wigfall gave her marijuana. App. 229, ll. 6-15; App. 116, l. 10 – 124, l. 12; App. 157, l. 10 – 158, l. 8.

Mother confronted Wigfall, and he denied the sexual abuse allegations. App. 203, ll. 20-25. Wigfall said he had, however, seen Minor 1 naked once. App. 191, l. 7 – 192, l. 2. He admitted to a police officer that he had given her marijuana. App. 262, ll. 7-14. A pediatric sexual assault nurse examiner examined Minor 1 and found her to have normal genital anatomy. App. 272, ll. 17-18; App. 276, l. 13 – 277, l. 4; App. 281, l. 15 – 283, l. 5. About a year *before* the disclosure, apparently while watching *Law & Order*, Mother asked Minor 1 if anyone had touched her inappropriately or was “doing anything” to her: “She said no.” App. 198, ll. 11-25. Wigfall moved out of the home after Minor 1's allegations, but he and Mother continued to have a relationship. App. 193, ll. 1-14; App. 204, l. 4 – 208, l. 15.

Wigfall's work schedule was similar to the children's school schedule, so he watched them regularly. App. 111, ll. 5-15. Minor 1 claimed the abuse primarily occurred in Mother's

¹ Citations to the record herein are to the large page numbers in the top, right-hand corner of the substitute Joint Appendix filed by the State on July 30, 2026.

bedroom while Mother was at work. App. 189, ll. 22-23; App. 118, l. 11 – 125, l. 3. According to Minor 1, Wigfall would text or call her from the bedroom to say, “Come here.”² App. 121, ll. 10-14. However, only one text message from Wigfall to Minor 1 would ultimately be offered during Wigfall’s trial in which he asked Minor 1 to come here for the three-year time span of alleged abuse. App. 139, l. 20 – 141, l. 25; App. 393 – 394.

Minor 1 said Minor 2 was always at home when the abuse occurred. App. 121, ll. 17-21. Minor 2’s bedroom was next door to Mother’s bedroom. App. 144, ll. 18 – 145, l. 1. Mother testified Minor 2 usually had his bedroom door open. App. 201, ll. 13-15. Minor 2 stated it was usually closed. App. 166, ll. 12-14. Minor 2 never saw anything sexual happen between Wigfall and Minor 1. App. 166, ll. 18-19. Mother had never seen anything sexual or inappropriate between them either. App. 166, ll. 18-20; App. 211, ll. 18-25. Mother testified it was not unusual for her to stop by the home unannounced between shifts, and she was shocked and confused that abuse could have happened. App. 202, l. 2 – 203, l. 19. However, Mother stated there were times when she came home to find Wigfall in his and Mother’s bedroom on their bed and Minor 1 on the floor watching television. App. 188, ll. 1-17.

Wigfall was indicted for third-degree criminal sexual conduct with a minor; two counts of second-degree criminal sexual conduct with a minor; and contributing to the delinquency of a minor, and he was tried before the Honorable Jennifer B. McCoy and a jury, from February 6 – 8, 2023. Mary Ford and Kaitlin Cornwell-Goulouze represented Wigfall, while Deborah Herring-Lash and Catherine Fries prosecuted the case. App. 395 – 396; App. 5, ll.17-21; App. 377, l. 24 – 378, l. 11; App 1.

² The State argues in its petition that Wigfall’s spelling in the text messages: “Cum here plz,” was deliberately sexual. State’s Petition for Writ of Certiorari at 5, n. 3. However, the messages contained numerous misspellings and grammatical errors. For instance, Wigfall spelled the word “something” as “sumthin” in the messages. App. 393 – 394.

The State put up testimony by Alix Desch, the forensic examiner who had interviewed Minor 1. It appears the sole purpose was to bolster or vouch for the minor's credibility. This was not outcry evidence. The State had already introduced Mother's testimony that Minor 1 disclosed the abuse to her and Mother called the police on or about June 8, 2020. App. 183, l. 12 – 190, l. 4. It had already introduced the testimony of Detective Perez, who testified he responded to the initial report of a sexual assault of a juvenile on June 11, 2020, and interviewed Minor 1 about it. App. 223, l. 19 – 227, l. 21. It had already introduced the testimony of Minor 1's friend, Ivy Grinnage, who testified Minor 1 disclosed the abuse to her in the fall of 2019 or early winter of 2020. App. 174, l. 20 – 176, l. 25. The State had presented similar evidence before the jury from multiple witnesses prior to calling Desch.

Because Minor 1 was a teenager rather than a young child at the time of her disclosure, the video recording of Desch's interview was not admissible. *See* S.C. Code Ann. § 17-23-175 (requirements for admissibility of out-of-court statement of child sexual abuse victim under the age of twelve). Desch did not provide a foundation for any exhibits; none were entered through her testimony. Nevertheless, the solicitor did try before the jury to get into the fact that the videos were ordinarily admissible with Desch, but the judge sustained that objection. App. 232, ll. 11-17. Desch was not needed as a child abuse dynamics expert, as the State introduced the testimony of a different witness for that purpose. App. 287, l. 6 – 302, l. 17.

Desch testified she had worked at the Dee Norton Child Advocacy Center for approximately seven years, and she had a Bachelor's degree in psychology and a Master's degree in social work from the University of Pennsylvania. App. 230, l. 18 – 231, l. 2. Desch's testimony included the following.

Q. And as part of your job, do you aid law enforcement in interviewing victims?

A. Yes, I do.

Q. Is that a policy that law enforcement needed to help in their investigations?

A. Yes, it is.

Q. And in that capacity, did you see [Minor 1]?

A. Yes.

Q. When did you see her?

A. . . .Based on my records, I saw [Minor 1] on two separate occasions. The first was on June 18 of 2020, followed by a second session on June 23 of 2020.

Q. And why were there two separate interviews?

A. During [Minor 1's] initial interview session, we actually took a lot of time in that interview, and there was a medical exam scheduled as well . . .

. . .

Q. And when accompanied by a parent, do they typically sit in on the interview?

A. No. So a part of the interview process at Dee Norton is that family members or caregivers are not allowed to actually be in the interview while it's taking place. It is held one-on-one with myself as the interviewer and the child. **And then our law enforcement partners are able to live observe through closed-caption television. So they can see what's occurring, but they're not actually in the room.**

Q. So is that interview audio and video recorded?

A. Yes, it is.

Q. And are you aware of a rule that allows the interview to be played in court?

MS. FORD: Objection, relevance.

THE COURT: Sustained, go ahead.³

BY MS. FRIES:

Q. Did [Minor 1] tell you about being sexual [sic] assaulted?

A. Yes.

MS. FORD: Objection. I think this is cumulative, your Honor, based on the bolstering of the other witnesses and everything.

THE COURT: Overruled. I'll allow it as phrased.

BY MS. FRIES:

A. Yes.

Q. And did she tell you where it happened?

A. Yes, she did.

Q. Where?

A. She reported that it took place in her bedroom, as well as her mother's bedroom.

Q. Did she tell you when it happened?

A. She gave a timeframe that it initially began, starting when she was in approximately seventh or eighth grade, so about 13 years old, and that it had gone on multiple times since then.

Q. And when was the last time you saw [Minor 1]?

A. To my recollection, the last time I saw her was on June 23. Typically when I conduct an interview with a child, I don't have any reason to see them afterwards and **I'm not involved in any of their future services at our center.**

Q. **Did you make any referrals to her?**

³ Regarding this line of inquiry, the prosecutor would go on to state in closing arguments: "You heard from Alix Desch, the interviewer at the advocacy center, that [Minor 1] did make a disclosure to her. And throughout the trial, you heard several objections from everyone about hearsay or saying what other people said. You may have noticed that you did hear people say what Mr. Wigfall said and heard his interview. Other witnesses, you can't hear their interviews or what they said. The rules are different since he's a party to this case." App. 334, ll. 5-13.

A. So we make standard—

MS. FORD: **Objection, vouching.**

THE COURT: Overruled. Go ahead.

BY MS. FRIES:

A. At Dee Norton, we make a 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.

Q. And is that pretty standard?

A. Yes, ma'am.

Q. Do you know if she followed through with that referral?

A. I don't have those records in front of me, but I have been informed that she did follow up—

MS. FORD: Objection.

THE COURT: Sustained. She can only testify of her own personal knowledge.

App. 231, l. 3 – 234, l. 10 (emphasis added).

The jury struggled with how much of the minor's testimony it believed. It deliberated for approximately six hours. It asked to be recharged twice. It acquitted Wigfall of two counts of second-degree criminal sexual conduct with a minor and convicted him of third-degree criminal sexual conduct with a minor and contributing to the delinquency of a minor. App. 366, l. 2 – 378, l. 16. He was sentenced to fifteen years' imprisonment suspended upon the service of twelve years' imprisonment and five years of probation; and to a concurrent three-year term of imprisonment, respectively. App. 390, l. 13 – 391, l. 1.

Wigfall served his notice of appeal on February 16, 2023. The Court of Appeals heard oral argument on April 8, 2025. On March 11, 2026, the Court of Appeals issued an opinion in which it reversed his convictions and sentences. *State v. Wigfall*, Op. No. 6140 (S.C. Ct. App. filed March 11, 2026) (Howard Adv. Sh. No. 10 at 9). App. 438 – 461. The Court of Appeals held the “trial court erred in allowing Desch to testify about law enforcement involvement.” *State v. Wigfall*, Op. No. 6140. App. 450. The Court of Appeals explained that Desch’s testimony “references the investigatory purpose our supreme 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.” *State v. Wigfall*, Op. No. 6140. App. 449. “Desch’s statement about law enforcement was bolstering because the testimony had no allowable purpose before the jury, particularly when she was not introducing the video recording of the interview.” *State v. Wigfall*, Op. No. 6140. App. 450. However, the Court of Appeals found no error in the admission of Desch’s testimony about referring Minor 1 for a mental health assessment and Minor 1’s own testimony about counseling. *State v. Wigfall*, Op. No. 6140. App. 450 – 454.

Wigfall and the State both sought rehearing and the Court of Appeals denied rehearing. App. 462 – 490. Wigfall has filed his petition for writ of certiorari to the Court of Appeals. The State has filed its petition for writ of certiorari to the Court of Appeals. This return to the State’s petition for writ of certiorari to the Court of Appeals follows.

STANDARD OF REVIEW

In criminal cases, this Court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5--6, 545 S.E.2d 827, 829 (2001). Thus, on review, the appellate court is limited to determining whether the trial court abused its discretion. *Id.* at 6, 545 S.E.2d at 829. A trial court abuses its discretion when its ruling is unsupported by the evidence or controlled by an error of law. *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002). "In general, rulings on the admissibility of evidence are within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party." *State v. Halcomb*, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct. App. 2009).

ARGUMENT

The Court of Appeals correctly held the trial court erred in admitting the forensic interviewer's testimony that upon twice interviewing the minor about the alleged abuse, she referred the case to be staffed with law enforcement, where the testimony had no permissible purpose, since testimony by a forensic interviewer about her investigatory role impermissibly bolsters or vouches for a complainant's credibility. The Court of Appeals correctly found the error required reversal where the case turned on the credibility of the minor.

"The assessment of witness credibility is within the exclusive province of the jury." *State v. Makins*, 433 S.C. 494, 501, 860 S.E.2d 666, 670 (2021) (quoting *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012)). A "witness cannot bolster the credibility of another witness because doing so invades the province of the jury." *Makins*, 433 S.C. at 502, 860 S.E.2d at 670-71 (citing *Briggs v. State*, 421 S.C. 316, 328, 806 S.E.2d 713, 719 (2017)). It "is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter." *State v. Kromah*, 401 S.C. 340, 358-59, 737 S.E.2d 490, 500 (2013).

A "forensic interviewer may not be permitted to give testimony that improperly bolsters the credibility of the victim." *Briggs*, 421 S.C. at 323, 806 S.E.2d at 717 (citing *State v. Douglas*, 380 S.C. 499, 505, 671 S.E.2d 606, 610 (2009)). However, forensic interviewers serve a legitimate, in-court purpose when the case involves the abuse of a young child. *See* S.C. Code Ann. § 17-23-175 (recording of investigative interview and out-of-court statement of child sexual abuse victim under age of twelve is admissible if listed requirements are met); *State v. Whitner*, 399 S.C. 547, 559, 732 S.E.2d 861, 867 (2012) (forensic interviewer's testimony was for limited purpose of laying proper foundation for admission of videotape and did not vouch for credibility of alleged victim).

It had become “common practice is to present the forensic interviewer to jurors as a ‘human lie-detector.’” *State v. Anderson*, 413 S.C. 212, 220, 776 S.E.2d 76, 80 (2015) (citing *Kromah* supra, at n. 4). “Forensic interviewers might be useful as a tool to aid law enforcement officers in their initial investigative process, but this does not make their work appropriate for use in the courtroom.” *State v. Kromah*, 401 S.C. at 357 n. 5, 737 S.E.2d at 499 n. 5. “[T]he work of a forensic interviewer, by its very nature, seeks to ascertain whether abuse occurred at all, i.e., whether the victim is telling the truth, and to identify the source of the abuse.” *Id.* Therefore, this Court has explained that a forensic interviewer should avoid the following kinds of statements at trial:

that the child was told to be truthful; a direct opinion as to a child’s veracity or tendency to tell the truth; any statement that indirectly vouches for the child’s believability, such as stating the interviewer has made a “compelling finding” of abuse; any statement to indicate to a jury that the interviewer believes the child’s allegations in the current matter; or an opinion that the child’s behavior indicated the child was telling the truth.

State v. Kromah, 401 S.C. at 360, 737 S.E.2d at 500 (cleaned up).

This Court has further “specified the appropriate scope of testimony for forensic interviewers.” *State v. Clark*, 444 S.C. 606, 613, 910 S.E.2d 481, 485 (2024).

[W]e take this opportunity to set forth the appropriate scope of the testimony of a forensic interviewer who has conducted a videotaped interview pursuant to § 17–23–175 . . . Assuming the court determines that the interview is admissible under the statute, the forensic interviewer will be called to testify before the jury. **The sole purpose of her jury testimony is to lay the foundation for the introduction of the videotape, and the questioning must be limited to that subject. There is to be no testimony to such things as techniques, of the instruction to the interview subject of the importance of telling the truth, or that the purpose of the interview is to allow law enforcement to determine whether a criminal investigation is warranted. This type of testimony, which establishes the “particularized guarantees of trustworthiness,” necessarily conveys to the jury that the**

interviewer and law enforcement believe the victim and that their beliefs led to the defendant's arrest, these charges, and this trial, thus impermissibly bolstering the minor's credibility. We hold none of the evidence necessary for the trial court's determination of "whether a statement possesses particularized guarantees of trustworthiness" and thus admissible under § 17-23-175(A)(4) and (B) is to be presented to the jury, as **such evidence necessarily vouches for the credibility of the alleged victim.**

State v. Anderson, 413 S.C. at 220-21, 776 S.E.2d at 80 (footnotes omitted). *See Briggs v. State*, 421 S.C. at 327-28, 806 S.E.2d at 719 (A forensic interviewer may serve "dual purposes" which include an "evidentiary purpose" (to lay the foundation for the introduction of the videotape), and an "investigatory purpose" (to aid law enforcement officers in their investigation). This "investigatory purpose should not be discussed in the forensic interviewer's testimony before the jury.").

The State argued in briefing before the Court of Appeals that Desch's testimony was proper because "the statements aided the jury in understanding the standard procedures associated with the interview." State's Final Brief of Respondent at 9; App. 432. That is impermissible "investigatory purpose" testimony which is improper. *Briggs v. State*, 421 S.C. at 327-28, 806 S.E.2d at 719.

The Court of Appeals correctly found that Desch's testimony she recommended the case be staffed with law enforcement was improper bolstering. *State v. Wigfall*, Op. No. 6140. App. 446 - 450. Desch had degrees in social work and psychology from an Ivy League school, yet she worked at a local Children's Advocacy Center helping sexually abused children and law enforcement officers. Desch would have been a very likeable, credible witness. Desch was not put up to lay the foundation to admit a recording of the forensic interviews. The recordings were inadmissible because of the minor's age at the time of the interviews. S.C. Code Ann. § 17-23-175 (requirements for admissibility of out-of-court statement of child sexual abuse victim under

age of twelve). As the Court of Appeals explained, “Desch’s statement about law enforcement was bolstering because the testimony had no allowable purpose before the jury, particularly when she was not introducing the video recording of the interview.” *State v. Wigfall*, Op. No. 6140. App. 450.

Nor did Desch give testimony about child sexual abuse dynamics: the State put up a different witness as a “blind” expert on that subject. *See, e.g., State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 271 (2018) (“behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized”). Desch had already testified that she conducted not one, but two interviews with the minor; and that she helped law enforcement by “interviewing victims.” Desch’s subsequent testimony indirectly conveyed to the jury that Desch believed Minor 1: she recommended the “case” be staffed with the Children’s Advocacy Center’s multidisciplinary team so they could meet with law enforcement investigators and “all” discuss it. *See Briggs*, 421 S.C. at 329, 806 S.E.2d at 720 (forensic interviewer’s testimony improper where it indirectly revealed she believed disclosure was truth).

Although the State now argues in its petition for certiorari before this Court that Desch’s testimony was proper under 801(d)(1)(D), *see* State’s Petition for Writ of Certiorari at 3; 18, Desch was not needed for “time and place” testimony pursuant to Rule 801(d)(1)(D), SCRE.⁴ Prior to Desch’s testimony, the State had already introduced Mother’s testimony that Minor 1 disclosed the abuse to her and Mother called the police on or about June 8, 2020. According to

⁴ “The primary method of providing corroborating testimony regarding an alleged sexual assault is through the specific rule created for CSC cases—Rule 801(d)(1)(D), SCRE.” *State v. Simmons*, 423 S.C. 552, 563, 816 S.E.2d 566, 572 (2018). *See* Rule 801(d)(1)(D), SCRE (A statement is not hearsay if the declarant testifies at trial and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant’s testimony in a CSC case where the declarant is the alleged victim and the statement is limited to the time and place of the incident.).

Mother, Minor 1 disclosed the abuse occurred “for the past three years” in “[m]y bedroom and her bedroom.” App. 183, l. 12 – 190, l. 4. It had already introduced the testimony of Detective Perez, who testified he responded to the initial report of a sexual assault of a juvenile on June 11, 2020, and interviewed Minor 1 about it. Perez testified Minor 1 disclosed abuse for about three years, approximately two times a week. App. 223, l. 19 – 227, l. 21; App. 229, ll. 2-15. It had already introduced the testimony of Minor 1’s friend, Ivy Grinnage, who testified Minor 1 disclosed the abuse to her in the fall of 2019 or early winter of 2020. Grinnage testified Minor 1 disclosed the abuse “had been happening for a while” at “her home.” App. 174, l. 20 – 176, l. 25. “It is undeniable that the primary purpose for calling a ‘forensic interviewer’ as a witness is to lend credibility to the victim’s allegations.” *State v. Kromah*, 401 S.C. at 358, 737 S.E.2d at 499. If the purpose of Desch’s testimony were “time and place” evidence, the State would have stopped there. The prosecutor would not have asked her to talk about law enforcement, the multidisciplinary team, and referring the case on. There was no purpose to call this witness other than to bolster the minor’s credibility.

Although the State argues the testimony was not bolstering since the recommendation was couched in “standard” terms, *see* State’s Petition for Writ of Certiorari at 15 – 16, “standard” is meaningless here. That is not how the testimony would have come across to the jurors, who were only deciding *this* case. If the prosecutor expected the jury to make nothing of this testimony, then the jury did not need to hear it. In *Chappell v. State*, 429 S.C. 68, 74, 837 S.E.2d 496, 499 (Ct. App. 2019), the Court of Appeals addressed “blind” expert testimony that: “Children don’t often lie about sexual abuse incidents.” In that case, the State argued “Galloway-Williams’ testimony was not improper bolstering because she did not indicate that the victim was telling the truth and gave only general testimony about the behavior of child

sexual abuse victims.” *Id.*, 429 S.C. at 77, 837 S.E.2d at 501. The Court of Appeals rejected that argument, holding “Galloway-Williams improperly commented on the victim’s credibility when she testified, ‘Children don’t often lie about sexual abuse incidents,’ because a comment on the credibility of a class of persons to which the victim belongs is a comment on the credibility of the victim.” *Id.*, 429 S.C. at 78, 837 S.E.2d at 501. In this case, the “standard” testimony improperly implied Desch believed that children did not lie about sexual abuse, and that children interviewed at the Dee Norton Child Advocacy Center were not lying about being abused. The testimony was bolstering. *Chappell v. State*, 429 S.C. at 78, 837 S.E.2d at 501.

“An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result.” *State v. Kromah*, 401 S.C. at 360, 737 S.E.2d at 501. “Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.” *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006). “Harmless beyond a reasonable doubt” means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002).

The Court of Appeals correctly found the error required reversal. *State v. Wigfall*, Op. No. 6140. App. 454 – 458. While the State argues the testimony was cumulative and thus not harmless, *see* State’s Petition for Writ of Certiorari at 19, the testimony was not cumulative. Although the defense could have objected when Desch testified that she aided law enforcement in interviewing victims, her subsequent testimony (that upon interviewing the minor, who disclosed abuse, she recommended the case be staffed with the multidisciplinary team for discussion with investigators) went further. That testimony came *after* Desch told the jury that Minor 1 did indeed disclose abuse. The “aid[ing] law enforcement” testimony came before Desch’s testimony that the minor disclosed abuse to her. The minor’s credibility was key in this

case. Although Minor 1 claimed that the sexual abuse happened frequently for three years, and that her brother was always home at the time, her brother did not see any misconduct. Her mother did not see misconduct when she came home unexpectedly between shifts. The minor's testimony was the only direct evidence of abuse. "[O]ur courts have found improper bolstering testimony was prejudicial in every South Carolina case in which the State presented no physical evidence of the defendant's guilt or relied solely on the victim's testimony to establish the details of the crime." *Chappell v. State*, 429 S.C. at 81, 837 S.E.2d at 503 (citations omitted). *See State v. Jennings*, 394 S.C. 473, 482, 716 S.E.2d 91, 96 (2011) (Kittredge, J., concurring) ("it may be a rare occurrence for the State to prove harmless error beyond a reasonable doubt in these circumstances"); *Thompson v. State*, 423 S.C. 235, 249, 814 S.E.2d 487, 494 (2018) (forensic interviewer's testimony which vouched for the victim's credibility was prejudicial where the only evidence the petitioner was the perpetrator was victim's testimony); *Smith v. State*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (forensic interviewer's improper bolstering of victim's credibility where the outcome of the case "hinged on the Victim's credibility regarding identification of the perpetrator, and there was otherwise an absence of overwhelming evidence of Smith's guilt" was prejudicial).

Highlighting the implausibility of the State's harmless error argument, this jury struggled with the case, deliberating for six hours, asking to be recharged twice, and ultimately acquitting on the two most serious offenses. *See generally State v. Rampey*, 438 S.C. 519, 528, 885 S.E.2d 366, 370–71 (2022) (in a "credibility contest" CSC with a minor trial, it was "clear the jury struggled to reach a decision here" as evidenced by its questions, and the "ultimate verdict could be construed as a compromise—acquitting Rampey of CSC second yet finding him guilty of CSC third—despite the Victim's testimony that they had sexual intercourse"); *Lounds v. State*,

380 S.C. 454, 463-465, 670 S.E.2d 646, 651-52 (2008) (finding prejudice where the jury's questions during deliberations, its requests for a recharge on kidnapping, and the replaying of the petitioner's testimony, indicate it struggled with whether petitioner was guilty of kidnapping; by its not-guilty verdict on the armed robbery charge, the jury necessarily rejected several aspects of the victim's account, and accepted as true certain parts of petitioner's testimony).

CONCLUSION

Based on the foregoing argument, Petitioner-Respondent Wigfall respectfully requests this Court deny the State's petition for writ of certiorari.



Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR RESPONDENT

This 14th day of September, 2026.