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S.C. SUPREME COURT

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
RETURN TO PETITION FOR WRIT OF CERTIORARI**

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STATEMENT OF WIGFALL'S ISSUES ON CERTIORARI

I.

“Whether the Court of Appeals erred in affirming the admission of the forensic interviewer’s testimony she recommended the minor receive a mental health assessment, where improper bolstering is testimony that indicates the witness believes the victim but does not serve some other valid purpose, since the testimony served no legitimate purpose but it impermissibly vouched for the minor’s credibility?”

II.

“Whether the Court of Appeals erred in affirming the admission of evidence the minor did receive counseling after she disclosed the alleged abuse, where testimony which improperly bolsters the credibility of the complainant is inadmissible, since the testimony indirectly conveyed to the jury that the minor was credible because counseling was given?”

COUNTER-STATEMENT OF WIGFALL'S ISSUE ON CERTIORARI

Did the Court of Appeals correctly conclude the trial judge did not abuse her broad discretion by both allowing the forensic interviewer to briefly testify about her standard practice of making a referral for a mental health assessment in every case and permitting the minor victim to affirm she went to counseling after disclosing the sexual abuse when that testimony did not in any conceivable way improperly bolster or vouch for the minor victim?

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. Both the State and Wigfall then filed petitions for a writ of certiorari in the Supreme Court.

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—in part—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—who, just like all other witnesses, swore to tell the truth before beginning her testimony²—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. 106-162). She further confirmed she spoke about the abuse with a friend,³ with Mother,

² Indeed, she had to do so; doing so is *required* for all witnesses in South Carolina, and it constitutes a criminal offense in our state for a witness who has been called to testify to “refuse to take an oath or affirmation[.]” S.C. Code Ann. § 16-9-330(b); *see* Rule 603, SCRE (“Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.”).

³ Confusingly, defense counsel objected on “bolstering” grounds when Victim was asked when she first disclosed the abuse to her friend. (App'x p. 127).

“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.⁴ (App’x p. 118; p. 125). Along with that testimony, screenshots of text messages⁵ 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).

Notably, as part of her testimony, Victim was asked if she went “to some counseling” after disclosing the sexual abuse. (App’x p. 143). In response to that question, defense counsel immediately objected on “bolstering” grounds, and the trial judge swiftly overruled the objection while indicating she was going to “allow it as phrased.” (App’x p. 143). Victim then confirmed she did, in fact, go to some counseling.⁶ (App’x p. 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

⁴ 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).

⁵ 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).

⁶ More specifically, Victim responded: “Yes.” (App’x p. 143).

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”⁷ may be—when he did. (App’x p. 188; pp. 190-192). Beyond that, Mother—in response to defense counsel’s questioning⁸—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 been taking place and confirmed he 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).

⁷ 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).

⁸ Defense counsel also asked Mother on cross-examination whether Victim went to counseling, and Mother confirmed that she did. (App’x pp. 213-214).

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 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 recorded⁹ law enforcement interview he gave marijuana to Victim¹⁰ and also reported

⁹ That recording was introduced into evidence and played for the jury. (App’x pp. 250-251).

¹⁰ 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).

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 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 related to counseling 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

Although the published decision of the Court of Appeals reversing Wigfall's convictions was wrong and needs to be corrected, the Court of Appeals correctly concluded the trial judge did not abuse her broad discretion by both allowing the forensic interviewer to briefly testify about her standard practice of making a referral for a mental health assessment in every case and permitting the minor victim to affirm she went to counseling after disclosing the sexual abuse because that testimony did not in any conceivable way improperly bolster or vouch for the minor victim.

Despite obtaining a reversal of his convictions through a divided decision of the Court of Appeals, Wigfall—like the State—submitted a petition for a writ of certiorari in this matter. Through his, Wigfall contends the Court of Appeals should have ruled more fully in his favor and found the trial judge reversibly erred by: (1) permitting Desch, the forensic interviewer, to testify she referred Victim for a mental health assessment after her interviews; and (2) allowing Victim to affirm she personally went to counseling after disclosing the sexual abuse. In support of that contention, Wigfall maintains Desch's objected-to testimony constituted improper bolstering or vouching because it purportedly "indicated she believed the minor was telling the truth" and somehow suggested Desch categorically believed no child ever lies about sexual abuse. Likewise, Wigfall maintains Victim's objected-to testimony somehow indirectly bolstered her *own* testimony because it allegedly "imparted to the jury that a counselor believed she had been sexually abused." To the contrary and just as the Court of Appeals unanimously recognized, neither Desch's testimony about her standard practice of referring children for a mental health assessment nor Victim's acknowledgement she went to counseling after disclosing the sexual abuse constituted improper bolstering or vouching in any way. Therefore, the trial judge did not abuse her broad discretion by admitting that testimony during trial, and there are no legitimate grounds upon which those sound evidentiary rulings could be disturbed on appeal. For those reasons, Wigfall's petition for a writ of certiorari should be denied. However, because

the Court of Appeals nevertheless wrongly reversed Wigfall’s convictions, the State’s petition for a writ of certiorari should be granted, the erroneous precedential decision of the Court of Appeals should itself be reversed, and Wigfall’s convictions should ultimately be affirmed.

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, Wigfall—much like Makins before him—contends Desch improperly bolstered or vouched for Victim’s testimony by explaining she always follows a standard practice of referring *every* child she interviews, including Victim, for a mental health assessment. Likewise, Wigfall contends Victim bolstered *herself* by personally confirming she went to counseling after disclosing the sexual abuse. Respectfully, just as was true in Makins, Wigfall’s contentions in that regard constitute a “bridge too far” and were and are wrong for multiple reasons. Makins, 433 S.C. at 503, 860 S.E.2d at 671.

Concerning Desch’s brief testimony,¹¹ that testimony—based on its actual content—simply could not logically have been and would not have been interpreted by the jury as expressing any personal opinions on Victim’s credibility because it 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 on any child’s credibility and certainly never suggested she

¹¹ Importantly, that 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)).

personally harbored any beliefs about the truthfulness of Victim’s disclosure. Cf. id. (“To suggest Rich’s simple affirmation that she provided therapy to Minor can singularly constitute improper bolstering is a bridge too far. In this specific context, Rich’s ‘yes’ alone, without more, did not convey to the jury that Rich believed Minor.”). 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.”). Under such circumstances, Desch’s testimony did not—just as the Court of Appeals correctly and unanimously recognized—improperly bolster or vouch for Victim in either a direct or indirect manner. 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); 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).

Meanwhile, concerning Victim’s testimony, Victim did not and could have improperly bolstered or vouched for herself by responding affirmatively when asked if she went to counseling after disclosing the sexual abuse because nothing about that answer logically suggested anyone believed she was telling the truth. 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”). Otherwise, as this Court recognized in Makins, no testimony about a juvenile victim of sexual abuse seeking or receiving treatment would ever be admissible, which would render rape trauma evidence—a long-accepted type of evidence in sexual assault cases—virtually always inadmissible. See Makins, 433 S.C. at 504, 860 S.E.2d at 672 (“The application of such an overly broad rule would mean the testimony of a child’s treating therapist—even when there was a blind characteristics expert—always indirectly and improperly bolsters the child’s credibility. In practical terms, the court of appeals’ ruling would require the exclusion of treating experts’ testimony in general—a result Makins acknowledged he is seeking but one he struggled to defend during oral argument. This Court and the court of appeals have generally allowed the testimony of treating experts in this context.”); see also State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) (explaining “[t]he purpose of rape trauma evidence is to prove the elements of criminal sexual conduct since such evidence may make it more or less probable the offense occurred” and further instructing: “White argues [the victim’s psychotherapist] should not have been allowed to testify the victim’s symptoms were consistent with those of a recent trauma sufferer. We disagree. [The psychotherapist]’s testimony is consistent with the probative purpose of admitting rape trauma evidence, i.e., to refute the defendant’s contention that the sex was consensual and to prove that a sexual offense occurred.”).

For all those reasons, the trial judge properly overruled defense counsel’s objections to Desch’s and Victim’s testimony, and the Court of Appeals correctly rejected Wigfall’s claims of

improper bolstering and vouching on appeal. However, for all the reasons identified in the State's petition for a writ of certiorari, the majority of the Court of Appeals nevertheless got Wigfall's case wrong. See id. at 501, 860 S.E.2d at 670 (“[U]nder 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.”). Accordingly, Wigfall's petition for a writ of certiorari should be denied, 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

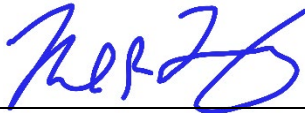
For all the foregoing reasons, it is respectfully submitted Wigfall's petition for a writ of certiorari should be denied. However, for the reasons articulated in it, the State's petition for a writ of certiorari should be granted.

Respectfully submitted,

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