

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Williamsburg County

Honorable Edward Miller, Circuit Court Judge

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BRITTANY EPPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001464

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PETITION FOR WRIT OF CERTIORARI

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**RECEIVED**

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**S.C. SUPREME COURT**

## INDEX

|                                                                                                                                                                                                                                        |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| INDEX .....                                                                                                                                                                                                                            | i  |
| ISSUES PRESENTED.....                                                                                                                                                                                                                  | 1  |
| STATEMENT.....                                                                                                                                                                                                                         | 2  |
| ARGUMENTS                                                                                                                                                                                                                              |    |
| I.                                                                                                                                                                                                                                     |    |
| The PCR court erred by finding trial counsel was not ineffective for failing to preserve for appellate review Confrontation Clause arguments in favor of cross-examining two witnesses with the fact of pending criminal charges. .... | 9  |
| II.                                                                                                                                                                                                                                    |    |
| The PCR court erred by finding trial counsel was not ineffective for failing to object to portions of the solicitor's closing argument which constituted improper vouching. ....                                                       | 14 |
| CONCLUSION.....                                                                                                                                                                                                                        | 17 |

## **ISSUES PRESENTED**

### **I.**

Whether the PCR court erred by finding trial counsel was not ineffective for failing to preserve for appellate review Confrontation Clause arguments in favor of cross-examining two witnesses with the fact of pending criminal charges?

### **II.**

Whether the PCR court erred by finding trial counsel was not ineffective for failing to object to portions of the solicitor's closing argument which constituted improper vouching?

## STATEMENT

On March 29, 2014, someone shot and killed Joseph Brown. The state presented a substantial amount of physical evidence that Petitioner's friend Jessica Jackson committed the murder and very little or no physical evidence that Petitioner committed the murder.

### **Background**

Petitioner and Jessica Jackson were in a romantic relationship. App. 160, ll. 7-8. The two met at a group home in Summerville, South Carolina. App. 161, ll. 6-9. At the time of the shooting, Jackson was eighteen years old, and Petitioner sixteen. App. 160, ll. 19-23. In February of 2014, Jackson moved in with Theodore McKnight, a friend of Petitioner's family. App. 164, ll. 14-20. Petitioner later began living at McKnight's house with Jackson. App. 166, l. 20.

In March 2014, Petitioner and McKnight met Joseph Brown (Decedent) at a Sonoco gas station. App. 172, ll. 15-19. Petitioner asked Decedent for a recommendation on where to purchase a "grill."<sup>1</sup> App. 174, ll. 3-7. During that conversation, Decedent offered to pay money in exchange for sex with Jackson, which was declined. App. 175, ll. 13-18.

On Marh 29, 2014, Petitioner and Jackson walked to Decedent's home. App. 190, ll. 20-21. Decedent left them there to go run and errand, during which time Jackson stole some items from the home. App. 192, ll. 21-22. Decedent returned home and invited Petitioner and Jackson to a cookout, which they attended. App. 197, l. 1; 200, ll. 3-4. After the cookout, Decedent took Petitioner and Jackson to McKnight's home. App. 657, l. 5 – 658, l. 6.

It is at this point where Petitioner's and Jackson's version of events diverge.

Petitioner testified that Jackson agreed to have sex with Decedent for money. App. 658, ll. 9-17. McKnight wanted to go purchase alcohol, and Petitioner wanted to go purchase

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<sup>1</sup> "Grill," in this context, means an oral insert that makes its wearer's teeth appear gold or embellished, not an instrument for outdoor cooking. App. 164, ll. 24-25.

marijuana. App. 658, ll. 7-9. Decedent, McKnight, Jackson, and Petitioner all got into Decedent's car. App. 660, ll. 3-4. Decedent dropped off Petitioner at a store within walking distance of where she purchased marijuana. App. 660, ll. 8-19. Decedent, McKnight, and Jackson drove away while Petitioner went to make her purchase. App. 660, ll. 20-25.

Later, Petitioner walked back to the spot where the group had agreed to meet. There, she saw Jackson sitting in a driveway, wearing only a bra and shorts. App. 661-662. Jackson's fingers were bleeding. App. 661, ll. 4-5. On Petitioner's suggestion, Petitioner and Jackson walked to Pearline Pressley's home to call for emergency services. App. 662, ll. 15-17. They called 9-1-1 from a neighbor's phone, and police and an ambulance arrived. App. 664, ll. 8-14. Petitioner told the officer that Jackson had shot her hand in a hunting accident which was the story she was instructed to tell. App. 664, ll. 15-21.

Petitioner presented other evidence in support of this theory. Schain McCrea testified that he and McKnight were incarcerated together at the Williamsburg County Detention Center from March of 2015 through the date of Petitioner's trial. App. 825, l. 24 – 836, l. 3. McCrea had known McKnight since he was twelve years old. App. 841, ll. 19-25. McKnight told McCrea that he was there during Decedent's murder. App. 844, ll. 14-15. McKnight told McCrea that they had dropped Petitioner off. App. 844, ll. 16-17, 21 – 845, l. 1. McKnight and Jackson planned to rob Decedent, but they ended up killing him. App. 844, ll. 17-20. McKnight never admitted who shot Decedent, just that Decedent was shot. App. 845, l. 20 – 846, l. 4. For his part, McKnight testified and denied being present during the shooting. App. 820, ll. 16-18; 821, ll. 20-22. Another witness who lived nearby testified that he went to investigate after hearing about a shooting on his police scanner, and a man approached him. App. 101-105.

Jackson testified that during the cookout, Petitioner told her she wanted to shoot Decedent so that she could steal his car and a gun that he showed them and placed in his glovebox. App. 207, ll. 1-5. The plan was for Jackson to use the straps on her purse to strangle Decedent while Petitioner retrieved Decedent's gun. App. 207, ll. 16-22. After having Decedent drive them to a remote area, Jackson began to attempt to choke Decedent. App. 215, ll. 10-15. However, her hands were sweaty, so she let go. App. 215, ll. 16-17. Jackson's DNA would later be found mixed with Decedent's on purse straps found in the rear floorboard of Decedent's car. App. 589-591. At this point, Petitioner and Decedent fought for control of the firearm. App. 215 l. 20 – 216, l. 1. Petitioner gained control of the gun and fired. App. 216, ll. 1-2. One of the bullets fired by Petitioner inadvertently struck Jackson's hand. App. 216, ll. 2-4. Jackson and Petitioner then placed Decedent's body into the trunk of his car. App. 224, l. 10 – 225, l. 19. Jackson told this story to police, but only after telling the police three other versions of events. App. 246-250.

While investigating, the police found a Cadillac key fob in the yard of Petitioner's aunt. App. 375. Mark Hatton, the previous owner of the Cadillac, testified that he sold Decedent the car and that he recognized the key fob as belonging to that car. App. 306, ll. 7-17.

## **Trial**

Petitioner was first tried between March 28 and April 1, 2016, before the Honorable Howard P. King and a jury. This trial ended in a mistrial due to a hung jury. Petitioner's second trial began on July 26, 2016, again before Judge King and a jury. App. 1. Deborah J. Butcher represented Petitioner; Kimberly V. Barr represented the state. App. 1.

Petitioner sought to impeach Mark Hatton with a pending charge for assault and battery and malicious injury to personal property. App. 312-313. Trial counsel argued that the

impeachment evidence was relevant to bias, and Hatton may have motive to testify falsely “to gain some favor from the state on those charges.” App. 314, ll. 7-10. Trial counsel, however, argued only about the Rules of Evidence, and never tried to expand her argument further, such as to the Confrontation Clause. The trial court excluded any mention of the pending charges. App. 318, ll. 17-24. McKnight was called as a witness by Petitioner. Petitioner sought to impeach him with a pending charge for murder that was not related to this incident. App. 639, ll. 11-14. The trial court disallowed this impeachment as well. App. 639, ll. 22-25.

During closing argument, trial counsel argued that the state did not call the case’s former lead investigator to testify, stating: “I got to ask how much did he care about this case? Again, both Mr. Brown has failed and Ms. Brittany Epps. Did you notice Officer Ballard? We didn’t hear from him. He’d been the one that was the lead investigator up until about three months ago, never heard from him, wasn’t on the stand.” App. 887, ll. 10-16. In response, the solicitor argued the following:

And you know what? Yeah, I didn't call Juan Ballard. Guess what? I didn't call about 10, 15 different people that I could. I guess I could have called, had every EMS worker who came out there, could have had the fire fighter come out here, put Ballard up, could have put all the SLED agents who were involved. Now we'd be here till next month or the month after; but yeah, I could have done that. And guess what, folks, you wouldn't know no more a month down the road than you know right now. You'd just have 10, 15 different people saying the same thing. So I don't want you to buy that whole notion 'cause it's easy to just try to, you know, throw stuff out there. It's a trick that we like to do with folks. We don't want you focused right here on the truth so we tell you, oh, we throw a little rock over there, look over there, look over there. That's what the Defense is doing to you today.

App. 905, l. 11 – 906, l. 3. Trial counsel did not object to this argument.

The jury began its deliberations at 12:50 p.m. App. 940, ll. 15-16. The jury returned approximately one hour later with a note asking the trial court to play an exhibit, the 9-1-1 call,

for them again. App. 941, ll. 12-16. The jury then requested a transcript of some testimony, which was instead played for them in court. App. 943-944. The jury resumed its deliberations but later presented another question to the trial court. That question was whether it was possible to find Petitioner guilty on count two (possession of a weapon during the commission of a violent crime) but not count one (murder). App. 947. Over no objections, the trial counsel instructed the jury that “the simple answer to that question was no.” App. 947, ll. 18-21. The jury ultimately returned with guilty verdicts on both counts. App. 949.

Because Petitioner was sixteen years old at the time of the offense, sentencing was delayed until August 24, 2016, to allow the trial court to hold an *Aiken v. Byars*<sup>2</sup> hearing. App. 962. At the conclusion of that hearing, the trial court sentenced Petitioner to forty-five (45) years’ imprisonment for murder, and five (5) years’ imprisonment for the gun charge, to run concurrently. App. 1015.

### **Direct Appeal**

Petitioner noted a timely appeal. On appeal, Petitioner raised one issue: “Did the trial judge err in not permitting [Petitioner] to impeach two witnesses concerning their pending charges in violation of [Petitioner’s] Sixth Amendment right to confrontation where the probative value of then pending charges was not substantially outweighed by the danger of unfair prejudice?” App. 1018. Specifically, Petitioner argued that the trial court had erred by not allowing her to impeach Theodore McKnight with his pending murder charge, or Mark Hatten with his pending charge for malicious injury to personal property. App. 1029-1047. The Court of Appeals affirmed in an unpublished opinion. App. 1081-83. While the Court of Appeals did not provide any analysis beyond a string citation, it can be gleaned from the opinion that the Court of

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<sup>2</sup> 410 S.C. 534, 765 S.E.2d 572 (2014).

Appeals found both arguments unpreserved. App. 1081-83. Petitioner did not seek certiorari review.

### **Post-Conviction Relief Proceedings**

Petitioner filed a timely application for post-conviction relief (PCR) on May 15, 2019. App. 1084-1090. An evidentiary hearing was held on October 31, 2022, before the Honorable Edward Miller. App. 1109. The late James K. Falk represented Petitioner; Zachary Jones represented the state. App. 1109. Petitioner alleged that trial counsel had rendered ineffective assistance of counsel. Specifically, she alleged, *inter alia*, that trial counsel was ineffective for failing to preserve the Confrontation Clause arguments that Petitioner made on direct appeal, and for failing to object to the portions of the solicitor's closing argument which mentioned witnesses that did not testify and what they would have testified to.

As to the preservation arguments, trial counsel agreed that she did not specifically argue the Confrontation Clause to the trial court. App. 1116, ll. 12-16; 1117, ll. 10-11; 1118, ll. 3-6. Trial counsel also testified that Mark Hatton's testimony was important to the state's case, because, in her opinion, the reason the first trial ended in a mistrial was because the state could not connect the key fob found in Petitioner's yard with the car. App. 1121, ll. 1-7.

As to the solicitor's closing argument, trial counsel testified that she "tr[ies] not to object to anyone's opening and closing unless I think it's really hurting the case because...it's just not really professional" and the jury does not like it when an attorney makes too many objections. App. 1120, ll. 12-17.

The PCR court denied relief and dismissed the application with prejudice. App. 1137. As to the allegation that trial counsel did not preserve a Confrontation Clause argument with regard to Mark Hatton, the PCR court found that Hatton's pending criminal charges were not relevant,

so trial counsel was not deficient for failing to argue alternative bases for their introduction, nor was Petitioner prejudiced. App. 1151. As to McKnight's pending murder charge, the PCR court found that Petitioner was able to show the jury that McKnight was in jail, which made the fact of McKnight's pending murder charge "much less probative." App. 1152. Further, the PCR court found: "To the extent Counsel wanted to establish that McKnight had a potential motive to testify against [Petitioner] due to his incarceration, McCrae's testimony would have been sufficient to support such an inference." App. 1152. Finally, the PCR court found that the fact of McKnight's pending murder charge was highly likely to be taken as propensity character evidence, which was highly prejudicial. App. 1152. Therefore, the trial court, even if presented with different arguments, would have excluded the evidence under Rule 403, SCRE. App. 1152.

As to trial counsel's failure to object to the solicitor's closing argument, the PCR court found that the closing argument was mostly permissible. App. 1154. The PCR court did suggest that the solicitor erred by arguing that all of the additional witnesses would "say the same thing" but that trial counsel "credibly testified" about her general aversion to objecting during closing arguments, and that the harmful nature of the solicitor's comments was diminished since the solicitor was expressly telling the jury to disregard additional, unrepresented evidence, rather than telling them to consider it. App. 1154-55.

This appeal follows.

## ARGUMENTS

### I.

The PCR court erred by finding trial counsel was not ineffective for failing to preserve for appellate review Confrontation Clause arguments in favor of cross-examining two witnesses with the fact of pending criminal charges.

Petitioner raised a meritorious argument on direct appeal – that the trial court erred by failing to permit Petitioner to impeach two important witnesses with the fact of their pending criminal charges. However, the Court of Appeals did not reach the merits of those arguments, finding them unpreserved for appellate review. Trial counsel was deficient for failing to preserve Petitioner’s arguments. Further, because Petitioner’s arguments are meritorious, Petitioner was prejudiced by the deficiency. This Court should grant certiorari and reverse.

To establish ineffective assistance of counsel, a PCR applicant must make a twofold showing: (1) counsel’s representation fell below “an objective standard of reasonableness;” and (2) but for counsel’s errors, there is a reasonable probability that the result of the proceeding would have been different. *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002); accord, *Strickland v. Washington*, 466 U.S. 668 (1984). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Smith v. State*, 386 S.C. 562, 566, 698 S.E.2d 629, 631 (2010). If counsel’s decisions are part of “sound trial strategy,” those decisions are “virtually unchallengeable.” *Strickland*, 466 U.S. at 690. However, “[c]ounsel must articulate a *valid* reason for employing a certain strategy to avoid a finding of ineffectiveness.” *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (*citing, inter alia, Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)) (emphasis in original). When the alleged deficiency is a failure to preserve an issue for appellate review, the PCR court must determine prejudice by deciding

whether Petitioner was likely to succeed on the merits of the unpreserved argument. *Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018). To that end, the PCR court must apply the same standard of review as the appellate court would have. *Id.* Because attorneys have a duty to be aware of the law, failing to make arguments that trial counsel should have known to make constitutes deficient performance. *See, e.g., Chappell v. State*, 429 S.C. 68, 80, 837 S.E.2d 496, 502 (Ct. App. 2019) (trial counsel deficient when he “should have known to object”); *Smalls v. State*, 422 S.C. 174, 186, 810 S.E.2d 836, 842 (2018) (trial counsel deficient for failing to object to improper character evidence).

During a criminal trial, the defendant has a right to confront witnesses against him. U.S. Const. amend. VI. This guarantee includes the right of the defendant to cross-examine a witness concerning potential bias. *Davis v. Alaska*, 415 U.S. 308, 316 (1974); *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). “[A]s a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.” *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (citation omitted). And “on cross-examination, *any fact may be elicited* which tends to show interest, bias, or partiality of the witness.” *Id.* (emphasis added; internal quotation marks and citation omitted). The fact of pending criminal charges is highly probative of bias. *State v. Sims*, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002). If a witness has pending criminal charges, there is a “substantial possibility [the witness] would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case.” *Id.* For that reason, South Carolina has a long line of case law establishing that a defendant must be permitted to cross-examine witnesses concerning pending charges and the potential sentences following therefrom. *State v. Gillian*, 360 S.C. 433, 602

S.E.2d 62 (Ct. App. 2004); *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 318; *State v. Brown*, 303 S.C. 169, 399 S.E.2d 593 (1991); *State v. Pradubsri*, 403 S.C. 270, 743 S.E.2d 98 (Ct. App. 2013).

Here, McKnight and Hatton were critically important witnesses. There was no real physical evidence that Petitioner was involved in the commission of the murder at all. Hatton provided one of the only pieces of evidence that did not come from Jackson's self-serving, thrice contradicted testimony. In fact, trial counsel testified at the PCR hearing that she believed Hatton's testimony was the main differentiator between the result of the first trial (hung jury) and the conviction in the second trial. The main thrust of Hatton's testimony was to identify a key fob found in Petitioner's aunt's yard and testify that key fob went to Decedent's car. It would not be unreasonable to suggest that Hatton's pending criminal charges, however minor, formed a motivation to testify that a key fob he did not recognize in fact belonged to Decedent's car.

The error in McKnight's case is even more stark. McKnight's testimony was vitally important because Petitioner's theory of defense is that McKnight was at the crime scene and Petitioner was not. Further, McKnight's presence at the crime scene would completely contradict Jackson's testimony which made up the vast majority of the state's proof. When McKnight denied having been at the crime scene, therefore, it became vitally important to impeach him. McKnight had a pending criminal charge for murder. This Court has recognized that the more severe a pending criminal charge is, the more potential it has to result in biased testimony. *See Sims*, 348 S.C. at 25, 558 S.E.2d at 523. Murder is the most serious offense. A potential life sentence and minimum thirty-year sentence provided McKnight with extraordinary motivation to give biased testimony in hopes that the solicitor and eventual sentencing judge will look more favorably on him. For that reason, the PCR court's reasoning—that the probative force of the pending murder charge was negated by the fact that the jury already heard McKnight was

incarcerated—does not hold water. A juror who heard that McKnight was in jail for *something* would not automatically assume he was in jail for murder. *Cf. Mizzell*, 349 S.C. at 334, 563 S.E.2d at 319 (“A ‘long sentence’ may have different meanings to different jurors.”).

Further still, the error was not harmless. *See Milledge*, 422 S.C. at 380, 811 S.E.2d at 804 (PCR court must employ same standard as appellate court would have to determine whether PCR applicant was likely to succeed on appeal); *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986) (Confrontation Clause errors are subject to harmless error analysis). When the witness in question provides the only direct evidence of a crucial fact, the limitation of their cross-examination will rarely be harmless. *See, e.g., Mizzell*, 349 S.C. at 334, 563 S.E.2d at 318 (“Critically, however, [the witness] was the only witness to testify as an eyewitness to petitioners’ burglary of the home.”); *Pradubsri*, 403 S.C. at 284, 743 S.E.2d at 106 (witness provided the only evidence of constructive possession of drugs). This was a very close case. The only real evidence that Petitioner murdered Decedent was Jackson’s testimony. McKnight’s testimony and McCrae’s impeachment of McKnight, taken together, could have contradicted Jackson’s testimony on a crucial point. Considering that Jackson was already testifying to her fourth separate version of events and the self-serving nature of her testimony, it is possible, if not likely, that another significant contradiction would have rendered Jackson’s testimony entirely unbelievable. Without Jackson’s testimony, it is extremely unlikely that the jury would have convicted Petitioner of murder. Especially since, even with Jackson’s testimony, the jury struggled mightily, asking several questions of the trial court during its deliberations. Therefore, it cannot be said that the error was harmless beyond a reasonable doubt. *Van Arsdall*, 475 U.S. at 684; *accord, Chapman v. California*, 386 U.S. 18 (1967).

For these reasons, trial counsel should have known to preserve the Confrontation Clause arguments for appellate review and was deficient for failing to do so. Further, Petitioner was likely to succeed on the merits of her Confrontation Clause appellate arguments had they been preserved for review. Therefore, Petitioner has demonstrated both deficiency and prejudice. Trial counsel rendered ineffective assistance of counsel. This Court should grant certiorari and reverse the PCR court's contrary holding.

## II.

The PCR court erred by finding trial counsel was not ineffective for failing to object to portions of the solicitor's closing argument which constituted improper vouching.

The solicitor argued to the jury that there were at least ten or fifteen other witnesses that would have testified and corroborated the testimony of the state's witnesses that did testify at trial. This argument constitutes improper vouching. However, trial counsel did not object to the statement. Because the solicitor's statement was improper, trial counsel should have objected to it. And because trial counsel's reason for not doing so, that she dislikes objecting during closing arguments, is not a valid strategic reason not to object, trial counsel was deficient. Further, because this was a close case proven by a slim margin, Petitioner was prejudiced by the deficiency. This Court should grant certiorari and reverse.

During closing argument, a solicitor "must confine their...remarks to the record and the reasonable inferences that may be drawn therefrom." *Tappeiner v. State*, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016) (citing *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). Whether a witness is credible or not is "within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). Therefore, solicitors are not permitted to "vouch" for a witness's credibility, because doing so both invades the jury's province and "places the government's prestige behind the witness." *Tappeiner*, 416 S.C. at 250, 785 S.E.2d at 477 (citing, *inter alia*, *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004)). "Vouching" occurs when a solicitor makes "explicit personal assurances" or when a solicitor "indicat[es] that information not presented to the jury supports the testimony." *Vaughn*, 362 S.C. at 169, 607 S.E.2d at 75.

While trial counsel's decisions will not be questioned if they were strategic, *see Strickland*, 466 U.S. at 690, that strategy must be valid. *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402. When an attorney fails to object to comments "which constitute an error of law and are inherently prejudicial," however, there can be no valid strategic rational. *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002); *see also, Dawkins v. State*, 346 S.C. 151, 157, 551 S.E.2d 260, 263 (2001) ("Counsel's failure to object because he did not want to confuse or upset the jury does not constitute valid strategy.");<sup>3</sup> *Washington v. State*, 440 S.C. 550, 573-74, 891 S.E.2d 668, 681 (Ct. App. 2023) ("Trial counsel expressed a valid strategy for refusing the [curative] instruction," but even that valid trial strategy is invalid due to "the evident impropriety of the solicitor's remarks"); *Brown v. State*, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009) (trial strategy for failing to object not valid when impropriety of solicitor's remarks was evident).

Here, the solicitor's comments were improper vouching. Whether or not there were ten or fifteen other witnesses that would have testified consistent with the state's other witnesses, those witnesses were not presented to the jury. Thus, the solicitor strayed outside of "the record and the reasonable inferences that may be drawn therefrom." *Tappeiner*, 416 S.C. at 250, 785 S.E.2d at 477. Further, the solicitor's insistence that these additional witnesses would have testified identically to her other witnesses gave the jury the impression that "information not presented to the jury supports the testimony." *Vaughn*, 362 S.C. at 169, 607 S.E.2d at 75. In this case, the effect of the solicitor's remarks was to essentially suggest to the jury that they need not worry about whether the state's witnesses had been truthful, because she, an agent of the government, could assure them that there was a substantial amount of corroborating evidence that she had not presented merely to save time. This is vouching by definition.

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<sup>3</sup> *Overruling on other grounds recognized by Thompson v. State*, 423 S.C. 235, 246, 814 S.E.2d 487, 492 (2018).

Further, trial counsel's apparent strategic reason for not objecting—that she generally does not object to avoid looking bad to the jury—is not a valid reason for failing to object, as a matter of law. *See, e.g., Dawkins*, 346 S.C. at 157, 551 S.E.2d at 263 (“Counsel’s failure to object because he did not want to confuse or upset the jury does not constitute valid strategy.”). Accordingly, trial counsel should have objected and had no valid strategic reason not to do so. Thus, trial counsel rendered deficient performance.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari to allow for further briefing on the issues presented.



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W. Chandler Norville  
Appellate Defender

ATTORNEY FOR PETITIONER

This 2<sup>nd</sup> day of October, 2026.