STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No.: 2010-178866

Darrell Efird..... Petitioner,

v.

State of South Carolina..... Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

Darrell Efird, ("Petitioner"), was indicted at the June 2007 term of the York County Grand Jury for three counts of Criminal Sexual Conduct (CSC) with a Minor 2nd degree (2007-GS-46-1991 to -1993), CSC, 2nd degree (2007-GS-46-1994), Attempt to Commit CSC, 1st degree (2007-GS-46-1995), and Incest (2007-GS-46-1996). James W. Boyd represented him on these charges. From July 10-12, 2007, the Petitioner proceeded to trial by jury before the Honorable Lee S. Alford.

During trial, Judge Alford granted Petitioner's request for a directed verdict on one count of CSC with a Minor, 2nd degree (2007-GS-46-1991). The jury ultimately found Petitioner guilty of two counts of CSC with a Minor, 2nd degree (2007-GS-46-1992, -1993), CSC, 2nd degree (2007-GS-46-1994), the lesser included offense of Assault and Battery of a High and Aggravated Nature (ABHAN) (2007-GS-46-1995), and Incest (2007-GS-46-1996). Judge Alford sentenced Petitioner to twenty years for CSC with a Minor, 2nd degree (2007-GS-46-1992), twenty concurrent years for CSC, 2nd degree (2007-GS-46-1994), ten concurrent years for ABHAN (2007-GS-46-1995), one concurrent year for incest (2007-GS-46-1 996), and ten consecutive years for CSC with a Minor, 2nd degree (2007-GS-46-1993).

A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Efird, 2009-UP-248 (S.C. Ct. App. filed May 28, 2009). The Remittitur was issued on June 15, 2009.

Petitioner filed this application for post-conviction relief (PCR) on August 31, 2010. An evidentiary hearing into the matter was convened on September 2, 2010. The Honorable John C. Hayes, III, denied and dismissed Petitioner's application by Order dated

September 20, 2010.

Petitioner filed a notice of appeal and a Petition for Writ of Certiorari was filed on his behalf by Elizabeth A. Franklin-Best, Esquire, of Appellate Defense. Respondent filed a Return to the Petition for Writ of Certiorari on October 21, 2011. On January 15, 2015, this Court issued an Order directing the parties to address the PCR issues that follow. Petitioner filed a Brief of Petitioner on March 11, 2015. This Brief of Respondent follows.

ARGUMENTS

I. The PCR court properly found Counsel was not ineffective for not objecting to the Solicitor's various statements in closing arguments as Petitioner suffered no resulting prejudice.

Petitioner asserts the PCR court erred by not finding Counsel ineffective for not objecting to various comments made by the Solicitor during her closing argument in Petitioner's case. These arguments are without merit.

Conscience of the Community Argument

The PCR court properly held counsel was not ineffective for failing to object to the Solicitor's comments as they was based on the record and reasonable inferences therefrom, and a comparison of relevant case law shows these did not rise to the inflammatory level of appealing to the passions and prejudices of the jury. Moreover, the comments merely echoed the sentiments and rationale of S.C. Code § 16-3-657 which the jury was properly charged to the jury in this case. Petitioner asserts, in part, the following statement of the Solicitor improperly aroused the passions and prejudices of the jury:

> Most people don't want to believe that it happens in our community. And most people say you know what I can't look at a child and be sexually aroused...[b]ut the reality is...that child abuse happens in our community and it happens a lot more than people are willing to believe. It used to be a dark little corner and only a few people came out of there but the reality is that it is growing and that child abuse does happen and that we must confront it.

App. 435-436.

The PCR court found counsel was not ineffective for failing to object because the statement did not rise to the level of appealing to the passion and prejudice of the jury, and Petitioner was not prejudiced because the Solicitor's comments did not so infect

Petitioner's trial with unfairness so as to make his resulting conviction a denial of due process. App. 643.

The PCR court properly denied relief on this ground as the statements were based on the record and reasonable inferences from it. See Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) ("The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence"). The State's expert witness, Dr. Allison Defelice, testified to the following: child sexual abuse is typically perpetrated by an adult male who is a family member or caregiver of the child, or has some other supervisory power over the child, App. 205; 207-208; research shows two-thirds of child victims do not disclose the sexual abuse until after they reach adulthood, and disclosure is usually made to an individual outside of the victim's family, App. 212-213; 245-246; children who are victims of sexual abuse sometimes give hints or "'tentatively disclose" the abuse to a third person to gauge how that person will respond to full disclosure, and a negative response may indicate to the child that the abuse should be buried and never brought up again because third parties will not believe the child or cannot handle the issue, App. 248-250; and because child sexual abuse is typically a private matter involving no other witnesses and very little 'crime scene" evidence, investigations of abuse focus on the victim and the victim's statement, App. 234-235.

Relevant case also supports the conclusion the argument did not rise to the inflammatory level of appealing the passion and prejudice of the jury. Compare Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010) (characterization of Sunni Muslim defendant as "domestic terrorist" and references to events of September 11th improperly appealed to jurors' sense of passion and prejudice involving anti-Muslim sentiment); and

State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881, n.6 (2007) (in capital homicide by child abuse case, statements "'we will kick the baby some more" if a life sentence is returned and "'it will be on your heads if he kills someone else" in prison were permissible arguments based on reasonable inferences of record); with State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007) (finding statement asking jury to give victim's wife peace and justice was consistent with prosecutor's duty to see justice done). Nor did this statement impermissibly insinuate that the jury should convict Petitioner in the absence of proof beyond a reasonable doubt. See State v. Liberte, 336 S.C. 648, 652, 521 S.E.2d 744, 746 (Ct. App. 1999) (although prosecutor's statement improperly played on jury's fear of impact of drugs in society, "far more troubling" was insinuation that reasonable doubt standard is a threat to Jaw and order).[1]

Moreover, the Solicitor's comments merely echoed the sentiments and rationale of §16-3-657, which the jury was properly instructed on in this case. (App. 464). § 16-3-657 provides that '[t]he testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." Petitioner was principally charged with violations of S.C. Code § 16-3-655 for criminal sexual criminal conduct. The victim and Petitioner were the only witnesses with direct knowledge of the crimes, and no forensic evidence pointed to any particular perpetrator. This is exactly the type of case in which the Legislature, the Supreme Court observed, "has decided it is

1 In Liberte, the prosecutor responded to the defendants' attacks on SLED's investigation and suggestion the drugs were planted by telling them to listen to the reasonable doubt instruction and ask is it being used as a sword to attack law and order, attack law enforcement, to attack people who are trying to keep drugs off our streets'?" Id. at 652, 521 S.E.2d at 746. The Court observed the most prejudicial effect came from the invitation to convict the defendant even in the absence of proof beyond a reasonable doubt to keep the streets safe from drugs. Id. at 653- 54, 521 S.E.2d at 747. Reversal was required '[b]ecause the prosecutor's arguments encouraged the jury to disregard the most fundamental aspect of our criminal justice system." Id. at 657, 521 S.E.2d at 749.

reasonable and appropriate...to make abundantly clear...to the judge and to the jury ...that the defendant may be convicted solely on the basis of a victim 's testimony." State v. Rayfield, 369 S.C. I 06, 1 17, 631 S.E.2d 244, 249 (2006) (decision to charge §16-3-657 is not reversible error when not unduly emphasized and charge as a whole comports with law).[2]

Even if the Solicitor's comments were improper, any prejudice Petitioner suffered was adequately cured by the trial court's jury instructions. In addition to the jury instructions referenced in Argument (C), the trial court charged the jury that although the testimony of the victim in a CSC case need not be corroborated pursuant to S.C. Code § 1 6-3-657. This "does not change the fact that the state has the burden of proof of the charges against the defendant." App. 464. The court went on to instruct the jury that they judge the credibility of the witnesses and may believe one against many or against one. Furthermore, the Solicitor personally advised the jury that the law the judge charges is the ultimate authority on the law, that she was not a witness in this case, and that the jury is the trier of fact. App. 405.

Improper Vouching Argument

The PCR court properly held counsel was not ineffective on this basis. Although

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2 The legislative intent behind the enactment of § 16-3-657 was fully explained by the Supreme Court as follows:

> Section 16-3-657 prevents trial or appellate courts from finding a lack of sufficient evidence to support a conviction simply because the alleged victim's testimony is not corroborated. However, § 16-3-657 does much more. Enacting this statute, the Legislature recognized that crimes involving criminal sexual conduct fall within a unique category of offenses against the person. In many cases, the only witnesses to a rape or sexual assault arc the perpetrator and the victim. An investigation may or may not reveal physical or forensic evidence identifying a particular perpetrator. The Legislature has decided it is reasonable and appropriate in criminal sexual conduct cases to make abundantly clear – not only to the judge but also to the jury – that a defendant may be convicted solely on the basis of a victim's testimony.

Rayfield, 369 S.C. at 1 17, 631 S.E.2d at 249.

the Solicitor did comment on the victim's credibility, the Solicitor not did indicate that evidence not before the jury supported the victim's testimony. In addition, relevant case law supports the conclusion that the Solicitor's comments did not rise to the level of improper vouching. Instead, the Solicitor merely argued her version of the testimony presented and commented on the weight that testimony should be given. Even if the Solicitor improperly vouched for the witness, her comments were appropriate under the invited reply doctrine. The Petitioner argues the following statement, in part, was improper: "He was guilty, guilty, guilty. Their version is unreasonable and full of holes. Her story is consistent, cohesive, and true..."App. 459.

The PCR court found that although the "Solicitor's argument was improper because Solicitor may not vouch for the truthful ness of a witness, Petitioner was not prejudiced because the record wholly supports the verdict and the comments did not so infect the trial as to make the resulting conviction a denial of due process." App. 642.

The PCR court properly denied relief on this basis. Case law dictates that a Solicitor may not vouch for the credibility of a witness. As the South Carolina Supreme Court has explained:

> Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony. Vouching occurs when a prosecutor implies he has facts that are not before the jury for their consideration.
>
> State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) (citations omitted).

Here, the Solicitor clearly did not indicate that information not presented to the jury supported the victim's testimony, nor imply that she had facts not before the jury for

their consideration. Thus, no basis for an objection on these grounds existed at trial.

Furthermore, relevant case law supports the conclusion that although the Solicitor did comment on the victim's credibility, the comment did not rise to the level of improper vouching. See Gilchrist v. State, 350 S.C. 221, 565 S.E.2d 281 (2002) (finding improper vouching where solicitor statement, "'I'll say this from the bottom of my heart, that there is one soul, who was at one time unclean and is now clean," improperly assured the jury that the witness was worthy of belief, and repeated use of 'religiously-tinged language" enhanced impropriety of statement'); Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002) (solicitor improperly vouched for witness by stating, "All I have to do is determine whether or not he's a credible witness. I don't trust any of these people until I corroborate their testimony. And once I corroborate their testimony, yes, I put them on the witness stand...."). Unlike the comments in the preceding cases, the Solicitor in this case merely gave her version of the testimony and commented on the weight to be given it. See State v. New, 338 S.C. 313, 319, 526 S.E.2d 237, 241 (Ct. App. 1999) ("'Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony'") (citations omitted).

Even if the Solicitor improperly vouched for the victim, such comments were appropriate in response to defense counsel's vigorous attacks on the witness's credibility under the invited reply doctrine. See Vaughn, supra; Ellenburg v. State, 367 S.C. 66, 625 S.E.2d 224 (2009). Furthermore, any prejudice Petitioner suffered from the Solicitor's statement, if improper, was adequately cured by the trial court's instructions for the reasons set forth in Arguments (A) and (C).

Improper "Golden Rule" Argument

The Solicitor's statement did not rise to the level of an improper "Golden Rule" argument as it merely invited the jury to assess the credibility of the victim's testimony under the circumstances in which it was given. Even if the statement exceeded the bounds of argument typically allowed, the statement was proper in response to the defense's vigorous attacks on the victim's credibility under the "invited reply" doctrine. Furthermore, Petitioner suffered no prejudice as any impropriety in the Solicitor's statement was cured by the trial court's instructions to the jury.

In his application, App. 555, Petitioner alleged counsel was ineffective for failing to object to the following statement:

> She got up here and talked about having sex with her father. Just imagine for a minute for whatever reason and its illogical and it'll never happen to you but imagine that I called you and I said you know Mr. Juror, Mr. So and So, I want you to get on the stand and tell me about the last time you had sex with your wife or your husband . . . . [T]hink about how difficult it would be to get on that stand and testify you know what my wife and I last Thursday night this is it how it happened. You would be mortified. And that was a consensual, loving, hopefully fun encounter for you. That wasn't a dark dastardly deed that you weren't even consenting to. Think about what that takes. Put yourself in her shoes.

App. 438 (emphasis added).

The PCR court found counsel was not ineffective for failing to raise an objection as the statement was not improper and, regardless, Petitioner was not prejudiced by the statement. App. 642-643. The statement was not improper, the court found, because it "was not calculated to suggest that the jury should put themselves in the victim's shoes as to the crime," and instead "asked the jury to put themselves in the victim's position as to the traumatic experience of ... having to testify against her father about his horrific sexual abuse of her." In addition, the PCR court found Petitioner was not prejudiced as the statement did not so infect the trial with unfairness so as to make the resulting

conviction a denial of due process.

The PCR court properly denied relief on this ground as the Solicitor's statement, when taken in context[3], did not rise to the level of an improper "Golden Rule" argument. "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006). Relevant case law establishes that a statement constitutes an improper "Golden Rule" argument if it (1) asks the jury to imagine the crime being committed against them personally or someone they know, or (2) asks the jury to "speak for" the victim – i.e., render a verdict of guilty on behalf of the victim who is powerless to do so. See. e.g., State v White, 246 S.C. 502, 144 S.E.2d 481 (1965) (improper to ask jurors to imagine their mothers, wives, sisters, daughters 'in same position as [the victim], with a knife at her throat and a brute on top of her"); Johnson v. Bell, 525 F.3d 466 (6th Cir. 2008) (prosecutor's repeated use of statement "it could have been you" improperly encouraged juror identification with victim); U.S. v. Palma, 473 F.3d 899 (8th Cir. 2007) (statement to jurors that defendant "'got money from you and you" in conspiracy to defraud U.S. case improperly invoked jurors' individual pecuniary interests as taxpayers and suggested jurors themselves were direct victims of crimes); Reese, 370 S.C. at 37, 633 S.E.2d at 901 (solicitor improperly asked who speaks for the victim, then told jurors they speak for the victim with their verdict); State v. Brown, 383 S.C. 506. 680 S.E.2d 909 (2009) (impermissible for solicitor to instruct jury to "speak up" for child victim). The Solicitor's statement in

3 The use of language explicitly asking jurors to put themselves in a victim's shoes is not, by itself. dispositive as to the propriety of a statement made by a solicitor in closing argument as the statement should be understood in context in which they were made. See State v. Gathers, 295 S.C. 476, 479, 369 S.E.2d 140, 142 (1988) (holding solicitor's remarks concerning credibility of state witnesses, when taken in context, were not improper).

this case asked the jury to do neither of the above. Instead, the Solicitor's statement merely invited the jurors to assess the credibility of the victim's testimony based on the circumstances under which it was given. See U.S. v. Susi, 378 Fed.Appx. 277 (4th Cir. 2010).[4] Therefore, the statement did not constitute an invalid "Golden Rule" argument, and counsel was not deficient for failing to raise an objection.

Even if the Solicitor's statement exceeded the bounds of argument typically permitted, such an argument was proper in response to the defense's vigorous attacks on the credibility of the victim's testimony in closing argument. Under the "invited reply" doctrine, a prosecutor's conduct that would otherwise be improper may be excused if it was "an appropriate response to statements or arguments made by the defense." Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004); See also Ellenburg v. State, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2009) ("once the defendant opens the door, the solicitor's invited response is appropriate so long as it does not unfairly prejudice the defendant.")

Here, defense counsel argued in closing that the victim, under suspect and opportunistic circumstances, fabricated these allegations of sexual abuse and then conspired with her mother to extort money from Petitioner. Counsel noted the evidence showed that the victim had a normal social life and excelled as a student in high school – the time during which she was allegedly being raped by Petitioner. App. 412-413. It was not until the victim got away from Petitioner and attended college that she began to struggle with

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4 In Susi, the appellant argued the prosecutor made an improper 'Golden Rule" argument by stating: "we all may think that you'd never have fallen for this scheme. First of all, none of us are going to know what we're like at a later, older age." Id. 378 Fed.Appx. at 283. The Fourth Circuit disagreed:

> The prosecutor did not improperly appeal to the jurors' sympathy, nor did he ask the jury to make a decision as if they were in the victims' position. *Instead the statement called for the jurors to decide whether the witnesses' testimony was plausible based on context.* Id. at 283-84 (emphasis added).

academics and experience social problems.[5] App. 413-414. When the victim came home for Christmas break in 2005, Petitioner threatened to quit financing her education if she did not apply herself and improve her grades. App. 414- 415. The victim then waited to reveal the allegations of abuse when Petitioner and her mother were in a heated argument and Petitioner, the sole financial supporter of the family, had stated he was leaving and began packing his things. App. 415. The victim, angry at her father about money, saw an opportunity to take advantage of the situation. App. 416-417. With the threat of having charges pressed against him by his own daughter, the victim and her mother together then forced Petitioner to sign a contract promising to provide them with certain benefits.[6] App. 417-419. Counsel also pointed out that once the victim pressed charges, she was then able to obtain financial aid as a victim of abuse; thus, she no longer needed the financial aid her father threatened to take away from her. App. 420. In light of the above attacks on the victim's credibility made by defense counsel, the Solicitor's statement was an appropriate response.

Furthermore, any prejudice from the Solicitor's statement was adequately cured by the trial court's instructions to the jury. See Simmons, 331 S.C. at 338, 503 S.E.2d at 166-67 (1998) (alleged impropriety of argument is viewed "in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument'"); State v. Pierce, 289 S.C. 430, 433, 346 S.E.2d 707, 710 (1986) ("Jurors are presumed to follow the law as instructed"). The trial court instructed the jury that the State has the

5 In support of this argument, counsel noted that the victim failed two courses, made a D in another one and eventually lost her Life Scholarship. App. 414-415.

6 Counsel noted that the testimonies of the victim and her mother contradicted each other as to whose idea it was to write up the contract. App. 417; 419.

burden of proving Petitioner's guilt beyond a reasonable doubt. App. 461-463. The jury was also instructed that they were the finders of fact and were responsible for judging the credibility of each witness. App. 463-464. Furthermore, the jury was instructed that the case must be decided according to the testimony and evidence presented at trial, and may not be governed by sympathy, passion, prejudice, or public opinion. App. 476-477.

Lack of Remorse Argument

The Solicitor did not, as Petitioner contends, comment on Petitioner's lack of remorse. To the contrary, the Solicitor merely gave her version of the testimony and commented on the weight to be accorded it. Furthermore, the Solicitor's comments simply asked the jury to consider Petitioner's demeanor during certain parts of his testimony when assessing his credibility as a witness.

The Petitioner argues the following statement, in part, of the Solicitor was improper: "Does he get up on that stand does he show the awe and confusion and fear that he claims that is in his heart? Or does he sit there stoic, denial, lying, and blank like his wife?" App. 450.

The PCR court found counsel was not ineffective for failing to object to the above statement on the ground the Solicitor improperly commented on Petitioner's lack of remorse. App. 644. The statement was proper, the PCR court found, because it refers to Petitioner's credibility, and does not appear to refer to Petitioner's lack of remorse. Furthermore, the PCR court found Petitioner was not prejudiced by the statement as it did not so infect the trial with unfairness so as to make the resulting conviction a denial of due process.

The PCR court properly denied relief on this basis. Our state courts have held that

it is improper for a solicitor to comment on a defendant's lack of remorse. For example, State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), the defendant pled not guilty and testified he did not recall shooting a State Trooper. In closing argument, the Solicitor stated: "When he got on that stand, he said, 'I don't remember. But if I had done it, I'm sorry.' Did you hear him say that? Don't you think he ought to apologize..." Id. at 324, 360 S.E.2d at 319. The Court found these comments improper for the following reasons:

> [T]he solicitor's improper reference to appellant's lack of remorse was error because it was a comment upon his constitutional right to plead not guilty and put the state to its burden of proof. It would be an irreconcilable equivocation for the accused to plead not guilty, present a defense, and simultaneously express remorse for acts he denied committing. Under these circumstances, an apology would have violated appellant's Fifth Amendment right not to incriminate himself as well as his Sixth Amendment right to present a defense. Comments by the prosecution upon an accused's failure to express remorse invite the jury to draw an adverse inference merely because the defendant did not appear penitent.

The Solicitor's comments in the instant case are distinguishable from those found improper in Johnson as the Solicitor merely gave her version of the testimony and commented on the weight to be given it. See Caldwell, supra ("A solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony"). The Solicitor's comments were in direct response to Petitioner's testimony that he was shocked and speechless when the victim accused him of molesting her, App. 347; *385,* that he was confused by the accusations, App. 350. and that he was afraid his life would be ruined and it has in fact been ruined. App. 397.

Petitioner attempts to mischaracterize the Solicitor's statements as to his demeanor on the stand with comments on the accused's lack of remorse. To the contrary, the Solicitor merely asked the jury to consider the Petitioner's demeanor during certain

parts of his testimony when assessing his credibility as a witness. Accordingly, the Solicitor's comments were not improper, and counsel was not defective for failing to object.

Even if the Solicitor's comments were improper, any prejudice Petitioner suffered as a result was adequately cured by the trial court's instructions for the reasons set forth in Arguments (A) and (C).

Accordingly, this Court should affirm the PCR court's Order of Dismissal.

II. The PCR court properly found Counsel was not ineffective for not objecting to the testimony of the State's expert witness.

Petitioner's assertion that the State's expert, Dr. Allison Defelice, testified outside the limitations set by the trial court is refuted by the record. Dr. Defelice never gave any ultimate conclusions about the case, such as an opinion as to whether the victim was being truthful or whether abuse actually occurred in this case.

The PCR found counsel was not ineffective for failing to object to testimony of the State's expert witness because the record reveals the expert testified within the trial judge's guidelines. App. 645. Respondent submits there is probative evidence to support the PCR court's finding.

The trial court set the following limitations on Dr. Defelice's testimony:

> She can't testify and give and opinion about the particular facts in this case. I think she can testify what is consistent or inconsistent with the model that she has in so far as this case is concerned. But she can't give the ultimate opinion in this case as to whether sexual abuse actually occurred in this case. Or that she believes the victim over other witnesses and that sort of thing.... But they can talk generally about in so far as educating the jury as to information that they have in general why certain things happen or do not happen and whether it's consistent or inconsistent. But they can't give ultimate opinions in the case ....

App. 193-194.

Petitioner asserts Dr. Defelice's testimony exceeded the trial court's limitations when she testified she reviewed materials relevant to this case and heard testimony presented thus far at trial. Petitioner's assertion is without merit as the trial court's limitations were intended to prevent Dr. Defelice from providing conclusory opinions that would improperly bolster or vouch for the credibility of the victim. e.g., by giving an opinion as to whether the victim was being truthful or whether abuse actually occurred in this case. See State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) (error for trial court to admit portions of forensic interviewer's reports from interviews with alleged minor victims which improperly vouched for victims' veracity by stating each child providing compelling disclosure of abuse by defendant and concluded each child provided details consistent with information received from their mother, a police report, and other children); State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012) (trial court erred in admitting forensic interviewer's testimony which improperly bolstered victim's testimony by stating she found interviews with child victim "to be compelling for sexual abuse"). While Petitioner points out several specific examples of Dr. Defelice's testimony at trial, none of these excerpts prove that Dr. Defelice improperly bolstered the victim's testimony or provided a conclusory opinion as to the allegations of abuse. Because none of the excerpts improperly bolster or provide conclusory opinions as to the allegations of abuse in this case, Petitioner can prove no resulting prejudice. Accordingly, counsel was not ineffective for failing to raise an objection to the testimony of the State's expert, and PCR court's finding must be affirmed.

CONCLUSION

For all the foregoing reasons stated above, Respondent respectfully requests the judgment of the lower court be affirmed.

Respectfully submitted,

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July 13, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to York County

The Honorable John C. Hayes, III, Circuit Court Judge

DARRELL EFIRD,

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Brief of Respondent on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Office of Indigent Defense
1330 Lady St., Suite 401
Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served.

This 13th day of July, 2015.

CHANDRA E. YOUNG
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