STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO THE COURT OF APPEALS
Appeal from York County
The Honorable John C. Hayes, III, Post-Conviction Relief Judge

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Opinion No. 2016-UP-395 (S.C. Ct. App. filed August 3, 2016)

Appellate Case No. 2016-002189

DARRELL EFIRD, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTION PRESENTED

The Court of Appeals erred in holding that no prejudice resulted when trial counsel failed to object to five impermissible closing comments made by the solicitor and three instances of improper corroboration testimony from the state's sex therapist because an analysis of the case under the cumulative error doctrine revealed prejudice sufficient to prove petitioner was denied due process at trial due to these errors, particularly since the issue of credibility bore heavily in the case and impacted the defense.

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 ("Counsel") 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-46-1996); 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 an application for post-conviction relief 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. Respondent filed a Return to the Petition for Writ of Certiorari. The Court of Appeals granted Petitioner's petition for writ of certiorari per Order dated July 22, 2014, on the question of whether Counsel was ineffective for failing to object to improper comments and arguments in the State's closing argument and whether Counsel was ineffective for failing to object when the State's expert witness gave improper corroboration testimony. After full briefing, the Court of Appeals upheld the PCR judge's denial of PCR relief to Petitioner in Darrell Efird v. State, Unpublished Opinion No. 2016-UP-395 (S.C. Ct. App. filed August 3, 2016). App. 1-3.

A petition for rehearing was filed on August 18, 2016, but was denied by the Court of Appeals on September 26, 2016. App. 4-19; App. 24. Petitioner filed a petition for review by this Court regarding the Court of Appeals' decision. This Return to the Petition follows.

STANDARD OF REVIEW

The proper standard for reviewing a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a PCR proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. The Court of Appeals was correct in affirming the PCR Court's decision that no prejudice resulted from the acts of trial counsel complained about in Petitioner's petition.

Certiorari is not warranted in this case because the Court of Appeals was correct in affirming the PCR Court's finding that no prejudice resulted from trial counsel's failure to object to various comments made by the Solicitor during her closing argument and to specific testimony by the State's expert witness.

As an initial argument, Respondent asserts that this Court should dismiss Petitioner's argument that Counsel's alleged errors should be viewed as cumulatively ineffective. South Carolina courts have consistently declined to engage in cumulative error analysis. South Carolina courts have consistently declined to apply a cumulative error analysis in PCR actions. See e.g., Green v. State, 351 S.C. 184, 196-97, 569 S.E.2d 318, 324-25 (2002) (declining to address whether applicant was entitled to relief based on supposed cumulative effect of counsel's alleged errors); Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (finding PCR court did not err in failing to conduct a cumulative error analysis where only one allegation had merit and the "record simply did not contain 'several errors' for the judge to cumulatively assess"). In addition, a number of other jurisdictions, including the Fourth Circuit Court of Appeals, have held a cumulative effect analysis is inappropriate and that the appropriate analysis focuses upon each individual allegation of ineffective assistance. See Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998); Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir. 1996); Jones v. Sotts, 59 F.3d 143, 147 (10th Cir. 1995).

Additionally, Respondent would note that the Court of Appeals affirmed the PCR Court citing Smith v. State, which held that "no prejudice occurs, despite trial counsel's deficient

performance, where there is otherwise overwhelming evidence of the defendant's guilt." 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010). Respondent would echo the Court of Appeals, which reviewed the entire record, and argue that any allegations of deficient performance by trial counsel did not result in prejudice due to overwhelming evidence of Petitioner's guilt.

Conscience of the Community Argument

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. And that it takes jurors willing to believe children testifying against adults and parents to hold these people accountable. Child abuse is perhaps tide most cowardly of crime committed in York County...Because remember when this started he's the father; he's the adult and he prayed and exploited his own four year old daughter. That's what this entails. It is a cowardly evil thing and that is what goes on and that's why child abusers are so successful because they don't pick on adults. They don't pick on women of their own size. They don't go out in parking lots with their video cameras. They keep it at him where nobody is a witness.

App. 435, l. 13 - p. 436, l. 13.

In order to be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). The Court of Appeals properly affirmed the PCR Court's decision that 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.

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 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 of 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). Additionally, this statement did not 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 law and order).[1]

Moreover, the Solicitor's argument was not improperly appealing to the jury's passions or the conscience of the community. Regarding closing arguments a prosecutor "may in effect tell [the jury] that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of, the law..." State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975). The PCR Court was correct in finding that the Solicitor's argument did not so infect the trial with unfairness.

The PCR court also properly held that Petitioner was not prejudiced. Aside from the Court of Appeals affirming based on the fact that no prejudice resulted due to overwhelming evidence of Petitioner's guilt, any prejudice Petitioner suffered was adequately cured by the

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.

trial court's jury instructions. 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 § 16-3-657. This "does not change the fact that the state has the burden of proof of the charges against the defendant." App. 464.

Improper Vouching Argument

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, ll. 2-4. Although the solicitor did briefly 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. Additionally, even if the solicitor improperly vouched for the witness, her comments were appropriate under the invited reply doctrine.

The PCR court found that although the "solicitor's argument was improper because solicitor may not vouch for the truthfulness 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 stated, "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 it should be given. 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).

Additionally, the PCR Court correctly found that Petitioner was not prejudiced because the record supported the jury's verdict – which is echoed in the Court of Appeals' opinion holding that Petitioner cannot suffer prejudice if there is overwhelming evidence of guilt.

Golden Rule Argument

Petitioner's alleged counsel was ineffective for failing to object to the following

statement:

> That's what she got. And 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, ll. 6-20.

The PCR court properly denied relief on this ground as the Solicitor's statement, when taken in context, 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); 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 this case asked the jury to do none 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. 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 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.

The PCR court properly 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. The statement was not improper, the PCR Court found that 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 the victim having to testify against her father about his horrific sexual abuse of her." App. 642-643.

Furthermore, 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. Petitioner suffered no prejudice as any impropriety in the solicitor's statement was cured by the trial court's instructions to the jury. See Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 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"). Additionally, the PCR Court was correct in finding that no prejudice resulted because of overwhelming evidence of Petitioner's guilt.

Lack of Remorse Argument

The PCR Court correctly held that Counsel was not ineffective for failing to object to a comment on Petitioner's lack of remorse. Petitioner argues the following statement, in part, of the Solicitor was improper:

> Like it really wasn't a revelation and like he really could have responded. 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? Is that what you expected from him when he said those things?

App. 449, l. 25 - p. 450, l. 6.

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. 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 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.

The PCR court properly denied relief on this basis. Our 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 "because it was a comment upon his constitutional right to plead not guilty and put the state to its burden of proof." Id. at 324, 360 S.E.2d at 319.

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 it should be given. See Smith v. State, 375 S.C. 507, 523, 654 S.E.2d 523, 531–32

(2007) ("A solicitor has a 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, ll. 23-24), that he was confused by the accusations (App. 350, l. 8), and that he was afraid his life would be ruined and it has in fact been ruined (App. 397, ll. 20-22). 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 PCR Court correctly held that the solicitor's comments were not improper, that counsel was not defective for failing to object, and that Petitioner suffered no prejudice therefrom.

Solicitor's Comment Questioning Integrity of Counsel

Petitioner argues that a trial error occurred when the solicitor questioned the integrity of defense counsel, citing the following page and lines from the transcript:

> What did Tabitha gain by getting up here and telling you this story? What did she gain? At best she put herself twenty thousand dollars a year in debt on her own. Mr. Boyd oh you know she go those loans because she was a victim of sexual abuse. It's a loan. It's not a scholarship program. It's not a beauty contest. It's a loan. She's twenty and she's almost forty grand in debt. Yoo hoo I got a lot.

App. 437, ll. 10-17.

Respondent would first point out that this issue does not appear to have been specifically ruled upon by the PCR Court; however, Respondent would argue that whatever comments Petitioner believes were improper did not so infect the trial with unfairness as to make Petitioner's conviction a denial of due process. See Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). Additionally, no prejudiced resulted from these comments as there was

overwhelming evidence of guilt.

Testimony of 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 without merit. Petitioner argues that Dr. Defilice confirmed points raised by the State regarding tentative disclosure, delayed disclosure, age of disclosure, continued love for the parent (abuser), the acceptance of threats of from the abusing parent, and the accommodations made to the parent (abuser). 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. Because this finding by the PCR court is supported by probative evidence, the Court of Appeals was correct in affirming the PCR court's denial of post-conviction relief. This Court should affirm the decision of the Court of Appeals.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the Court of Appeals' ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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Dec. 5, 2016

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THE STATE OF SOUTH CAROLINA, RESPONDENT,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

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This 5th day of December, 2016

DEONNA ROGERS
LEGAL ASSISTANT