

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

MICHAEL WILSON,

Appellant,

v.

Case No. 5D20-1653

STATE OF FLORIDA,

Appellee.

Opinion filed October 8, 2021

Appeal from the Circuit Court
for Putnam County,
Patti A. Christensen, Judge.

Jason T. Forman, of the Law Offices of Jason
T. Forman, P.A., Fort Lauderdale, for Appellant

Ashley Moody, Attorney General, Tallahassee, and
L. Charlene Matthews, Assistant Attorney General,
Daytona Beach, for Appellee.

WOZNIAK, J.

Michael Wilson appeals the denial of his Florida Rule of Criminal
Procedure 3.850 motion seeking a new trial based on ineffective
assistance

of trial counsel. We vacate Wilson's conviction and remand for a new trial.

The record portrays a pattern of trial counsel errors traversing the proceedings from pretrial to closing argument in this case involving the sexual battery of a young teenager in the presence of her mother. Several of these errors, when considered together, are “sufficient to undermine confidence in the outcome.” *Strickland v. Washington*, 466 U.S. 668, 669 (1984).

Most notable among the deficient acts was trial counsel’s failure to call an available expert witness to challenge the State’s otherwise unrefuted medical expert testimony concerning the victim’s injuries. The failure to call such a witness, which alone constituted deficient performance under the facts of this case, was exacerbated by trial counsel’s failure to object to both improper bolstering testimony from the State’s medical expert that her abuse report had been peer reviewed by a certified child abuse pediatrician and the prosecutor’s closing argument highlighting this bolstering testimony. See, e.g., *Potts v. State*, 57 So. 3d 292, 294 (Fla. 4th DCA 2011) (finding examiner’s testimony that his conclusion had been verified by another examiner constituted improper bolstering); *Telfort v. State*, 978 So. 2d 225, 226–27 (Fla. 4th DCA 2008) (finding expert examiner’s testimony that print had been compared by two other examiners and identified as defendant’s was prejudicial error).

Given the record before us, we conclude that Wilson has established prejudice. Accordingly, this Court is bound to reverse and remand for a new trial.

REVERSED and REMANDED for a new trial.

WALLIS and EISNAUGLE, JJ., concur.