

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

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INDEX

INDEX i

ARGUMENT IN REPLY1

CONCLUSION.....3

ARGUMENT

Petitioner was denied effective assistance of counsel where counsel failed to challenge the prosecution's claim that Petitioner's fresh blood was splattered on the wall, where SLED found there was no blood on the wall, and where the freshness of the (nonexistent) blood was used to discredit Petitioner's alibi.

The State apparently concedes deficient performance. *See* State's return to petition for writ of certiorari pursuant to *Austin v. State* at 21 – 22 (hereinafter State's return). The State also concedes the substance on the wall was not blood. *See* State's return at 9.

The State argues in its return that Sergeant Weiner and Investigator Miller were “sincere” in their testimony the substance on the wall appeared to be blood. State's return at 21. Petitioner agrees. Petitioner is not claiming misconduct by those officers, who presumably have handled hundreds of criminal cases, who likely did not remember SLED's findings as to each item of forensic evidence in a given case, and who were probably relying on the prosecutor not to steer them wrong during their testimony. However, if two experienced police officers who worked on the case did not catch the problem with the “blood” evidence, it is unreasonable to expect that the jury could have done so.

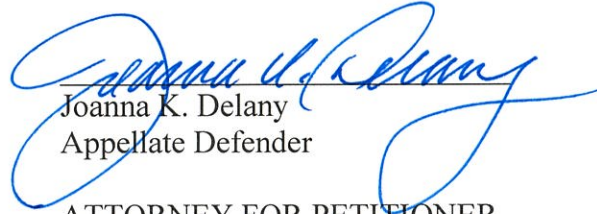
The State argues in its return that Petitioner has “failed to prove that the solicitor's witness examination and closing argument were intentionally misleading.” State's return at 22. Petitioner is arguing the solicitor made “factually incorrect” claims in her closing argument and through her witness examination rather than “intentionally misleading” claims. *See* petition for writ of certiorari pursuant to *Austin v. State* at 12 – 14; 16. Petitioner does not claim to know what was inside the prosecutor's head. Perhaps the prosecutor was not listening to her own expert witness from SLED when the expert said the substance was not blood. App. 252, l. 6 –

253, l. 9. Perhaps the prosecutor did not read the SLED report received by her office prior to trial which stated the evidence was not blood. App. 984 – 986. Regardless, the prosecutor should have known the substance was not blood based on this record, and her subsequent argument and witness examination are quite troubling. “I don’t think it takes an expert to testify to you that that stuff is fresh, that is fresh body tissue and blood. When blood dries it turns brown, doesn’t it? It turns a brownish color.” App. 691, ll. 11-17. Q. “[D]oes that appear to be fresh blood, tissue, hair in your experience?” A. “That would be fresh blood, the red.” App. 642, ll. 8-11. Also troubling, and of paramount importance here, is defense counsel’s failure to catch the factually incorrect claims and alert the jury.

The State argues in its return that “overwhelming evidence” of guilt precludes prejudice here because the defense witnesses were “non-credible.” State’s return at 22 – 23. But credibility is a question for the jury, and this jury deliberated for three hours. Petitioner had an alibi defense supported by the testimony of several witnesses, and he offered an innocent explanation for the forensic evidence at the scene. The evidence of guilt was not overwhelming, and Petitioner has proven *Strickland* prejudice, since counsel’s deficient performance allowed the jury to believe that Petitioner’s defense was invalid because if he was really at home when Complainant was shot as he claimed, his “fresh” “blood” would not have been on Complainant’s wall when law enforcement arrived. *Strickland v. Washington*, 466 U.S. 668, 695-96 (1984); *Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018).

CONCLUSION

For the foregoing reasons and those contained in the petition for writ of certiorari pursuant to *Austin v. State*, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


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ATTORNEY FOR PETITIONER

This 7th day of December, 2022.