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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

MIMI J. MARSHALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-001123

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

I. Did the PCR court err in finding a break in the chain of custody, caused by the state and concerning a non-fungible piece of evidence, justified the destruction of such evidence and excused trial counsel's failure to investigate or properly address such evidence at trial?

II. Did the PCR court err in determining that the state's destruction of physical evidence before examination by either the state's experts or the petitioner's expert before trial negated a finding of prejudice since the impact of such evidence was "speculative"?

STATEMENT

Doris Marshall died from a single gunshot wound to the head that raveled front to back and upwards, with an exit at the back right top of the skull (with a very slightly left right pattern of travel). App. 428, ll. 15 – 18. This wound was the result of an accidental discharge of petitioner's shotgun while Doris and petitioner, her husband of thiry-seven years, stood near the doorway to the marital home. App. 569, ll. 13 – 24; 775, l. 17 – 776, l. 11. During a disagreement about petitioner going outside to check on a poential disturbance, Doris grabbed the gun, and "it went up and it went off." App. 540, ll. 15-17; 775, l. 17 – 776, l. 11. This shotgun was ancient, manufactured before 1968, likely in 1949, and was in such an unsafe condition that it could have discharged without the trigger being pulled. App. 593, l. 12 – 594, l. 7. Petitioner was described as "heartbroken" and that he had claimed to family members that he had "messed up." App. 115, ll. 16-17; 116, ll. 5-10.

Petitioner's nephew, Robert Marshall, Jr., touched off a search by calling the police and other family members after petitioner had shown up, "heartbroken" in the wee hours of the morning. App. 115, ll. 16-17. Petitioner stated he had "messed up," and indicated that he had shot and killed Doris, though this "admission" lacked a statement of culpability. App. 116, ll. 5-10. After calls from relatives, police detained petitioner at a local bar based on information discovered at the scene and provided by Robert Marshall, Jr. earlier in the day, as well as accounts from family members at the trailer. App. 519, ll. 9 - 22. The state's theory, based in no small part on the "expert" testimony centered on blood patterns present at the crime scene, was that Doris "sat down to relax, [and] didn't even have time to untie her shoes," when petitioner sprung into "deadly action" by shooting her in the face. App. 643, ll. 6-22.

After his detention and transportation to the Richland County Sheriff's Office on August 16, 2015, petitioner gave a statement to Investigator Joe Clarke, of the Richland County Sheriff's Department, in which he told investigators he had a gun in the front room of the trailer because the trailer park was an unstable place, that Doris had grabbed the gun, and "it went up and it went off" as they were standing near the door. App. 540, ll. 14 - 21.

A Richland County grand jury indicted petitioner for murder and felon in possession of a firearm. App. 716 - 721. On October 30, 2017, petitioner was tried before the Honorable Robert Hood and a jury for murder.[1] App. 1. April Sampson, Sandra Moser, and Samuel McGlothin represented the State. App. 1. Alicia Goode, Stephen Krzyston, and Lucas Hawks represented the petitioner. App. 1. The jury convicted petitioner of murder. App. 702, l. 23 – 705, l. 14. Judge Hood sentenced petitioner to life without the possibility of parole for the murder and a concurrent five-year term on the weapon charge. App. 714, ll. 9-15.

During trial, the State's theory centered around what it contended was the factual impossibility of Appellant's claims. In support of that contention the State called two police witnesses that testified to "blood spatter evidence," Timothy Lee and Stan Richards. The state repeatedly elicited testimony and argued petitioner's contentions to police contradicted what blood spatter evidence showed to be true. App. 86, l. 20 – 88, l. 5; 89, ll. 5-14; 541, ll. 5-10; 642, l. 23 - 643, l. 5; 652, l. 2 - 13. By contrast, petitioner's trial counsel argued that the physical evidence was indicative of an unintentional shooting, that the State was wrong in its analysis of the physical evidence, and that there was no evidence of malice aforethought. App. 94, ll. 5-12; 667, l. 17 – 669, l. 10; 673, l. 24 – 674, l. 10. This included the expert testimony of Christopher Robinson who was qualified as an expert in crime scene reconstruction, firearms, and blood spatter analysis. App.

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[1] Petitioner did not contest the weapon offense and pled guilty to it. App. 8, l. 6 – 9, l. 23.

590, l. 22 – 591, l. 13. Robinson contradicted the state's experts, relying extensively on the physical nature of the wound to dispute the angle of the shotgun barrel as being pointed at Dorthy when the fatal shot was fired. App. 597, l. 9 – 599, l. 11. Importantly, a missing element from the blood pattern analysis from any of the experts was any testimony regarding the white t-shirt petitioner was wearing when the fatal shooting occurred.

During the PCR hearing, petitioner testified extensively how the accident happened and that the t-shirt he was wearing would have aided the evaluation of the crime scene by the expert witnesses who focused extensively on blood pattern evidence. App. 777, l. 9 – 778, l. 9; 780, ll. 4 – 19. At the PCR hearing, Petitioner's lead trial counsel, Alicia Goode, claimed to lack any memory of the t-shirt being addressed during trial. App. 789, ll. 14 – 23. However, Stephen Krzyston, co-counsel during trial, contradicted this claim and acknowledged a problem arose surrounding the t-shirt and that the state destroyed the t-shirt before trial. App. 795, ll. 2 – 17. At the PCR hearing, the destruction of the t-shirt was acknowledged by the state, with solicitor April Simpson claiming it was destroyed since the chain of custody was broken and the t-shirt could not be used as evidence during trial. App. 802, ll. 3 – 22.

Following the jury's verdict, petitioner appealed raising two issues to the appellate courts: the propriety of the state's experts and the lack of a charge on voluntary manslaughter. The Court of Appeals affirmed the conviction in an unpublished opinion. State v. Marshall, No. 2017-002329 (S.C. Ct. App. Aug. 12, 2020).

Petitioner filed for post-conviction relief. App. 722. In a *pro se* amendment to the PCR application, petitioner alleged counsel was ineffective and the state committed misconduct surrounding the destruction of the t-shirt and the blood pattern evidence it contained. App. 736-739. An evidentiary hearing was held before the Honorable Maite Murphy on January 11, 2024.

App. 766. Timothy Griffith appeared on behalf of petitioner and D. Russell Barlow represented the state. App. 766. Judge Murphy denied relief by written order of dismissal specifically addressing the impact on the bloody t-shirt. App. 805 – 834.

This petition for certiorari follows.

ARGUMENT

I. The PCR court erred in finding a break in the chain of custody, caused by the state and concerning a non-fungible piece of evidence, justified the destruction of such evidence and excused trial counsel's failure to investigate or properly address such evidence at trial.

A. How the issue was raised at PCR.

Petitioner asserted trial counsel was ineffective in failing to properly investigate and handle the issues surrounding the white t-shirt he was wearing during the fatal shooting. App. 736-739. Petitioner noted that the destruction of the t-shirt and the fact that it contained blood spatter and other potential evidence associated with the shooting was not fully disclosed and addressed during trial. App. 781, l. 12 – 782, l. 3. In his *pro se* amendment to his original application, petitioner specifically noted that the trial counsel's mishandling of the t-shirt evidence was due to trial counsel's failure to adequately present testimony that the t-shit was bloody, was found by petitioner's daughter, returned to law enforcement, and that the t-shirt was disposed of that prevented its use as evidence during trial. App. 738-39.

During the PCR hearing, petitioner testified extensively how the accident happened and that the t-shirt he was wearing would have aided the evaluation of the crime scene by the expert witnesses who focused extensively on blood pattern evidence. App. 778, l. 23 – 779, l. 20. Trial counsel claimed to lack any memory of the t-shirt being addressed during trial, though co-counsel directly contradicted this claim and acknowledged a problem arose surrounding the t-shirt and that the state destroyed the t-shirt. App. 789, ll. 14 – 23; 795, ll. 2 – 17. The destruction of the t-shirt was acknowledged by the state, with the solicitor admitting it contained blood evidence but

claiming it was destroyed by the state since they had broken the chain of custody and could not use the t-shirt as evidence during trial. App. 802, ll. 3 – 22.

B. How the PCR court ruled.

The PCR court ruled that the value of the t-shirt as evidence was "wrought with speculation and **not credible**." App. 826 (emphasis in original). The PCR court also found that the state's explanation – that the t-shirt was destroyed since the chain of custody had been broken – meant that trial counsel could not have been deficient since the t-shirt had lost evidentiary value. App. 829. Finally, the court found that no prejudice could be shown since the evidentiary value of the t-shirt was speculative. App. 829.

C. How the PCR court erred.

The PCR court erred in finding the solicitor's explanation, that the chain of custody required destruction of the t-shirt, was credible since it was based on an error of law. Here, the t-shirt was non-fungible and could have been authenticated and used as evidence.

> While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence—that is, evidence that is unique and identifiable—the establishment of a strict chain of custody is not required: If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition.

State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741–42 (2005). "Because the challenged evidence in this case is not fungible, unlike the cocaine in Melendez–Diaz or the blood sample in Bullcoming, here strict chains of custody are not required for admission into evidence." State v.

Brockmeyer, 406 S.C. 324, 352, 751 S.E.2d 645, 660 (2013). Brockmeyer itself dealt with an imperfect chain of custody of a t-shirt, finding it a non-fungible item that did not require a strict chain of custody analysis. Moreover, counsel for petitioner waived any objection to the state's evidence based upon a chain of custody objection pre-trial. App. 57, ll. 4 – 18.

The PCR court erred in basing its ruling on the solicitor's misunderstanding of the impact of ***the issue the state created*** with the chain of custody. Here, the state had possession of the t-shirt and other pieces of physical evidence as they searched the vehicle petitioner drove after the shooting. App. 571, l. 24 – 573, l. 13. The state released the vehicle, not noticing the bag containing the petitioner's bloody t-shirt inside the car. App. 381, ll. 14-25. Petitioner's daughter found the t-shirt, contacted law enforcement, and returned the t-shirt to their possession. App. 382, ll. 1-4. While a break in the chain was created by the state, that did not provide the state license to unilaterally elect to destroy evidence. The PCR court erred in excusing trial counsel's handling of the t-shirt based upon the state's claim that the evidentiary value of the t-shirt was negated due to a break in the chain of custody the state caused.

Since the break in the chain of custody would not have made the t-shirt inadmissible at trial, the PCR court should have examined trial counsel's handling of this piece of evidence during trial to determine if counsel was effective. The PCR court erred as a matter of law in finding the solicitor's explanation that the t-shirt had lost its evidentiary value due to a break in the chain of custody excused any deficient performance by trial counsel.

As noted below, this case involved competing experts that disagreed about the conclusions to draw from an inspection of the crime scene and the photos depicting the scene. As the jury's sole determination was to evaluate how the shotgun was fired, either with intent or by accident, trial counsel was ineffective in handling the evidence surrounding the destroyed t-shit. The PCR

court erred as a matter of law in excusing trial counsel's ineffective assistance on the basis that trial counsel could not have been deficient since the t-shirt had lost evidentiary value due to a break in the chain of custody caused by the state. App. 829.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which *at a minimum* includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (emphasis added); *see also* Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) ("Moreover, while the scope of a reasonable investigation depends upon a number of issues, 'at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.'").

"Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Gilchrist v. State, 350 S.C. 221, 226–27, 565 S.E.2d 281, 284 (2002). However, "strategic choices made by counsel after an incomplete investigation are reasonable 'only to the extent that reasonable professional judgment supports the limitations on the investigation.'" McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (*quoting* Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)). Here, trial counsel Goode claimed no memory of the t-shirt and could not articulate a valid strategy in failing to investigate or prepare for the importance of the state's destruction of this piece of evidence. App. 789, ll. 18 – 23. While petitioner's co-counsel both remembered the t-shirt being destroyed by the state, they failed to make any motion regarding the destroyed evidence and failed to lay a proper foundation for a spoliation charge related to the state's admitted destruction of the t-shirt. App. 625, ll. 10 – 22; 795, ll. 2 – 17; 802, ll. 5 – 22.

As discussed in more detail *infra*, Trial counsel's failure to investigate and properly prepare for the importance of the destroyed t-shirt was ineffective assistance of counsel. *See* McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008)(finding ineffective assistance in not attempting to rebut the medical studies counsel knew the State's experts would cite); Bagwell v. State, 410 S.C. 259, 266, 763 S.E.2d 630, 634 (Ct. App. 2014) (finding the decision not to test broken glass for DNA prior to trial was unreasonable because the state used the glass as circumstantial evidence of guilt). The PCR court erred as a matter of law in excusing this deficient performance due to a break in the chain of custody claim.

II. The PCR court erred in determining that the state's destruction of physical evidence before examination by either the state's experts or the petitioner's expert before trial negated a finding of prejudice since the impact of such evidence was "speculative".

A. How the t-shirt evidence could have impacted trial.

During trial, petitioner's counsel attacked the nature of the police investigation and, particularly, the basis for the opinions of the blood pattern experts. Of note, this included questions surrounding the impact of the t-shirt on their investigation and whether or not they examined it.

> Q And there was a t-shirt that the -- Mr. Marshall was supposed to be wearing when all this happened, a full white t-shirt?
>
> A I never saw the Defendant.
>
> Q Okay. So you never examined a full white t-shirt?
>
> A No, sir.

App. 241, ll. 11-16. Notably, this line of questioning was from lead trial counsel Goode, who claimed at the PCR hearing not to remember anything related to this t-shirt. App. 789, ll. 22-23.

As part of trial strategy, Goode noted deficiencies in the crime scene investigation. Investigator Lee did not do any "tests" when "doing the blood spatter," and he did not photograph the blood in question with scale, a reference to known measurement standards placed within the focus of the evidentiary photograph. App 169, l. 21 - 25. Lee did not follow department blood spatter protocols in failing to conduct road-mapping or take measurements of the room in question. App. 170, l. 1 – 3. Lee acknowledged no measurements were taken at the crime scene, that the photographs "might have been" over or underexposed, and that over or underexposure could lead to inaccurate depiction of probative evidence. App. 223, ll. 12-13; 228, ll. 23-24. Lee also admitted he had not complied with the technical requirements for the prescribed photographic

documentation process, and that no stringing, one of two available empirical methodologies, had been done to determine an area of convergence, a reference to the area in which a blood-letting originated. App. 235, ll. 9-22.

The imprecise nature of the state's experts testimony would have been further undermined by trial counsel's proper handling of the destroyed t-shirt. Trial counsel attempted to use the destroyed t-shirt but, due to improper investigation and lack of presentation of testimony that would have connected the t-shirt and its importance to the investigation, the trial court denied a spoliation charge negating its potential impact before the jury.

> MR. HAWKS: We want accident, involuntarily and spoliation.
>
> THE COURT: What's the spoliation based on?
>
> MR. HAWKS: The spoliation is about the shirt that was found in the van.
>
> THE COURT: All I've heard is there's a white shirt in the van that she was told she could throw away.
>
> MR. HAWKS: It is the shirt that he was wearing when the shooting occurred.
>
> THE COURT: And where is the evidence of that in the record?
>
> MS. GOODE: Robert, Jr. testified that he was wearing a white t-shirt. I believe there was another witness that testified he wore a white t-shirt. Ms. Tamieka Marshall testified that she had the white t-shirt and when asked -- she, I guess, asked law enforcement what she could do with it, they told her she could throw it away.
>
> THE COURT: Where is the evidence that that white t-shirt is the white t-shirt he had on?
>
> MS. GOODE: I think that's part of our issue, Your Honor. It's a white t-shirt that potentially had evidence on that and it could have helped in the case.
>
> THE COURT: Okay. There's no evidence of spoliation in the record. I'm not going to charge spoliation.

App. 624, l. 24 – 625, l. 22.

Through trial counsel's errors, she failed to elicit testimony from any of the witnesses connected to the destroyed t-shirt that created the connection to the shooting itself – the presence of blood. At the PCR hearing, petitioner's co-counsel admitted the defense was aware that the police had overlooked the t-shirt in their initial search and that the t-shirt was never presented to the blood pattern witnesses. App. 795, ll. 3 – 17. At the PCR hearing, the state admitted the t-shirt contained blood evidence as relayed by petitioner's daughter who contacted police indicating the bloody t-shirt had been left in the vehicle. App. 802, ll. 7 – 22. Interestingly, during trial, the solicitor failed to volunteer this information to the trial court during the discussion surrounding the bloody t-shirt and its connection to the testimony elicited during trial. App. 624, l. 24 – 625, l. 22. During the course of trial, for each witness questioned by trial counsel regarding the t-shirt, counsel failed to ask if there was blood on the t-shirt, creating the disconnect between the t-shirt's importance and the trial itself.

As noted, the case turned on whether the shotgun was intentionally fired or discharged accidentally. The age and condition of the shotgun itself made it ripe for an accidental discharge. App. 593, l. 12 – 594, l. 7. The trajectory of the fatal wound supported an upward angle of the barrel, not a horizontal aiming. App. 428, ll. 15 – 18. As the solicitor noted in her closing argument, the wound caused "blood letting of horrific proportions." App. 651, ll. 14 – 15. The solicitor noted "how there's blood on the ceiling. There's blood on the blinds. There's blood on these blinds. There's blood on the couch. There's blood on the floor. There's blood on the table." App. 652, ll. 2 – 5. Most of this blood evidence was relied upon and interpreted differently between the state's experts and the defense expert. A potential vital component of that blood evidence,

petitioner's t-shirt worn when the fatal shot was fired, was omitted solely on the conduct of the state, as noted *supra*.

Petitioner noted the failure of trial counsel to elicit the required testimony surrounding the t-shirt and its condition during the PCR hearing:

> Q. Okay. And then to add to that they knew about it, but did not present it to the court, is that correct?
>
> A. My daughter was on -- my daughter, she, was on the stand.
>
> Q. Okay.
>
> A. They could've questioned her right then ---
>
> Q. All right.
>
> A. and got that straight. Alicia Goode came and told me at the courthouse where everybody work, she said she had questioned my daughter about the t-shirt. My daughter lied first. But she can clean and said, yes, I found the t-shirt and took it back to the sheriff's department.

App. 781, l. 15 – 782, l. 3.

B. How the PCR court ruled.

As noted *supra*, the PCR court found the evidentiary value of the t-shirt entirely speculative since it had been destroyed by the state before trial and that any assertions that it would have impacted the outcome of trial was conjecture. App. 829.

C. How the PCR court erred.

When evidence, under the control of the state, is lost or destroyed, it can lead to dismissal of criminal charges. "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a *significant role in the*

suspect's defense." California v. Trombetta, 467 U.S. 479, 488 (1984) (emphasis added). When that evidence has "an exculpatory value that was apparent before the evidence was destroyed" and was "of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means" then the accused has been deprived of due process and dismissal is the appropriate remedy. Id. at 489.

In contrast, when the evidence lacks apparent exculpatory value but instead may be classified as only potentially exculpatory, a showing of bad faith for a violation of due process under the United States Constitution is required. Arizona v. Youngblood, 488 U.S. 51, 58 (1988) ("We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law."). Thus, under the Constitution of the United States, to "establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith [Youngblood], *or* (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means [Trombetta]." State v. Cheeseboro, 346 S.C. 526, 538–39, 552 S.E.2d 300, 307 (2001) (emphasis and brackets added).

The Youngblood prong of the analysis (requiring bad faith) was revisited in State v. Reaves, 414 S.C. 118, 777 S.E.2d 213 (2015). In Reaves, the South Carolina Supreme Court noted that "[a]lthough the record is replete with indications the police investigation was deeply flawed, the record also contains no indication these flaws were the product of more than mere negligence" and denied dismissal for various pieces of lost evidence, the value of which fell squarely under Youngblood's potentially exculpatory sphere. Reaves, at 129, 777 S.E.2d at 219. Importantly, our Supreme Court noted several states declining to follow the "bad faith" requirement from

Youngblood under state constitutional grounds and noting the issue under the South Carolina Constitution was not before it:

> A number of state courts have declined to follow the bad faith standard established in Youngblood based on state law grounds. *See, e.g.*, State v. Ferguson, 2 S.W.3d 912, 917 (Tenn. 1999) ("Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the Youngblood analysis in its pure form."); State v. Osakalumi, 194 W.Va. 758, 461 S.E.2d 504, 512 (1995) ("As a matter of state constitutional law, we find that fundamental fairness requires this Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record."); Commonwealth v. Henderson, 411 Mass. 309, 582 N.E.2d 496, 497 (1991) ("The rule under the due process provisions of the Massachusetts Constitution is stricter than that stated in the Youngblood opinion."). *However, Reaves does not ask this Court to do so here; his argument rests solely on the Fourteenth Amendment to the United States Constitution.*

Reaves, 414 S.C. at 127, 777 S.E.2d at 217 (emphasis added).

Even if dismissal was unlikely, absent a showing of bad faith, trial counsel made no motion during trial concerning dismissal based upon destruction of evidence. While trial counsel did seek a spoliation charge, that request was denied by the trial judge due to lack of foundation establishing the t-shirt in question had been worn during the shooting, a fact the state conceded to be true at the PCR hearing. App. 624, l. 24 – 625, l. 22; 802, ll. 7 – 22. Having failed to secure a spoliation charge, trial counsel did not mention the destroyed t-shirt at all during closing argument.

This Court has approved charging the jury on spoliation: "the trial court instructed the jury '[w]hen evidence is lost or destroyed by a party you may infer that the evidence which was lost or destroyed by that party would have been adverse to that party.'" State v. Reaves, 414 S.C. 118, 128, 777 S.E.2d 213, 218 (2015). Here, the reason the trial court rejected the spoliation charge

based upon the error of trial counsel failing to present testimony that described the t-shirt, including the blood stains, that would have connected the destroyed t-shirt to the fatal shooting.

The PCR court erred in excusing trial counsel's handling of the destroyed evidence on the basis that its evidentiary value was purely "speculative." App. 829. The record from trial reflects trial counsel attempted but failed to secure a spoliation charge on a case that hinged on a battle of experts surrounding the accidental discharge of an ancient shotgun. While the blood pattern evidentiary value of the t-shirt worn by petitioner was "speculative," the conduct of the state caused that speculation since it unilaterally destroyed the evidence based upon a flawed understanding of the law, as noted *supra*.

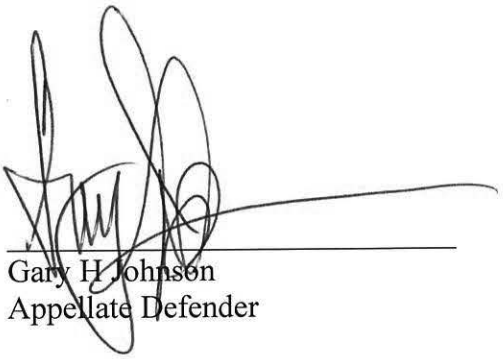
D. Prejudice.

That petitioner shot his wife Doris was not in dispute. After thirty-seven years of marriage, the fatal discharge of petitioner's ancient shotgun was not in question. The state asserted a cold-blooded murder based upon blood pattern evidence, nature of the wound and expert testimony. Added to this presentation was petitioner's own behavior following the shooting, which the state argued demonstrated guilt. App. 661, ll. 10 – 24. Petitioner presented accident, based upon expert testimony reviewing the same blood pattern evidence as well as the angle and nature of the fatal wound and the unsafe nature of the ancient shotgun. App. 597, l. 9 – 599, l. 11. Petitioner's trial counsel also relied upon criticism of the state's experts in their failure to follow proper investigative techniques and take accurate measurements. App. 170, l. 1 – 3; 223, ll. 12-13; 228, ll. 23-24; 235, ll. 9-22. The impact of a spoliation charge from the trial court, based upon the state's unilateral destruction of evidence in its possession, would have added weight to the argument that the state's handling and use of the blood pattern evidence was unreliable. Here,

petitioner has established that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (*quoting* Strickland v. Washington, 466 U.S. 668, 692 (1984)).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of certiorari to allow full briefing on these issues.



Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of November, 2024.