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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Kristi F. Curtis, Circuit Court Judge

JACOB D. DROTNING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001438

PETITION FOR WRIT OF CERTIORARI

MOLLY M. KEEGAN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUES PRESENTED

I.

Whether the PCR court erred by refusing to find trial counsel ineffective for failing to object to Dr. Shaver's testimony because it allowed him to improperly give his opinion on the ultimate issue of petitioner's intent and where petitioner was prejudiced by trial counsel's deficient performance?

II.

Whether the PCR court erred by refusing to find trial counsel ineffective for failing to object to Dr. Shaver's testimony because his testimony exceeded the scope of his expertise, and thus, petitioner was prejudiced by trial counsel's deficient performance?

STATEMENT

In July of 2014, the Oconee County grand jury indicted petitioner for attempted murder and arson second-degree. App. 661-64. In May of 2015, the Oconee County grand jury indicted petitioner for criminal domestic violence of a high and aggravated nature (CDVHAN) and malicious injury to property. App. 657-60. Thereafter, on October 17, 2016, petitioner proceeded to a jury trial before the Honorable R. Scott Sprouse. App. 1. Gregory Lee Cole, Jr., represented petitioner, and David R. Wagner and Lindsey Satterfield Simmons prosecuted the case. App. 1. The jury returned verdicts of guilty as charged. App. 1. Judge Sprouse sentenced Appellant to thirty (30) years for attempted murder, twenty (20) years consecutive for arson, ten (10) years concurrent for CDVHAN, and five (5) years concurrent for malicious injury to property. App. 456, ll. 12-24. After petitioner moved to reconsider his sentence, which was denied, he filed a timely notice of appeal. App. 459-61. Petitioner's convictions and sentence were ultimately affirmed. App. 462-95.

On September 12, 2019, petitioner filed an application for post-conviction relief (PCR). App. 497-503. On March 6, 2020, the state filed a return and motion for a more definite statement. App.504-13. Then, on February 22, 2023, counsel for petitioner, Susannah Ross, filed an amended PCR application raising, as relevant, ineffective assistance of counsel for failing to object to improper opinion testimony outside the scope of the witness' expertise. App. 514-16. On August 21, 2023, the state filed an amended return. App. 517-30. On September 16, 2024, an evidentiary hearing was held before the Honorable Kristi F. Curtis. App. 531-88. Susannah Ross represented petitioner, and Talida Balaj represented the state. App. 531. On July 3, 2025, Judge Curtis signed an order denying PCR and dismissing petitioner's application with prejudice. App. 589-656. This petition follows.

ARGUMENTS

I.

The PCR court erred by refusing to find trial counsel ineffective for failing to object to Dr. Shaver's testimony because it allowed him to improperly give his opinion on the ultimate issue of petitioner's intent and where petitioner was prejudiced by trial counsel's deficient performance.

Relevant facts

Trial

During petitioner's trial on the charges of attempted murder, CDVHAN, arson second-degree, and malicious injury to property, the state presented evidence that Catherine Cook suffered third-degree burns to sixty percent of her body following the incident on May 16, 2014. App. 115, ll. 5-6; 119, ll. 19-20; 138, ll. 17-19; 306, ll. 20-23; 309, ll. 16-17. Specifically, Cook testified that petitioner was her husband, and they moved to South Carolina in 2013. App. 110, ll. 22-23; 111, ll. 1-2. She testified that concerning the incident, she remembered petitioner standing in the hallway, but he did not look worried or panicked. App. 115, ll. 14-21. She testified that she was "a little fuzzy on the details" concerning why she was in the hospital but knew that petitioner put her there. App. 120, ll. 5-8. On cross-examination, Cook agreed that she did not remember petitioner harming her on the night of the incident but testified that she saw him. App. 125, ll. 2-5. She did not see petitioner with a lighter or a gasoline can in his hand and did not see him pour gasoline on her or try to burn her. App. 125, ll. 6-17.

Further, as relevant, Dr. Joseph Robert Shaver, testified as an expert in critical care and internal medicine, without objection. App. 304, ll. 14-20. He explained that he was board certified in internal medicine and that critical care referred to a specialty of taking care of

patients who are critically ill and patients that had organ failure. App. 303, l. 11 – 304, l. 1. He treated Cook and was involved in helping her manage her organ systems. App. 305, ll. 15-25. He explained the degree of burns Cook suffered and the treatment of organ failure. App. 308, l. 1 – 313, l. 17. He also explained the process of debridement and grafting. App. 314, l. 21 – 322, l. 17. Particularly, after the state inquired whether Dr. Shaver thought that the gasoline burns were consistent with a self-inflicted burn, *see* App. 325, l. 4 – 326, l. 13, the state asked:

> Q: In your medical opinion, if someone is doused in gas and lit on fire, does the actor *intend* to kill them?
>
> A: I would think that the act would lead to death.

App. 326, ll. 14-17 (emphasis added). Trial counsel did not object to the state's line of questioning or Dr. Shaver's response. *See generally* App. 326.

The jury found petitioner guilty as indicted, and Judge Sprouse imposed a total sentence of fifty years' imprisonment. App. 446, l. 5 – 447, l. 14; 456, ll. 12-24.

Evidentiary hearing

During his evidentiary hearing, petitioner testified that Dr. Shaver was allowed to testify without objection to the ultimate issue of intent. App. 557, ll. 12-15. Trial counsel agreed that he did not object to the expert testimony from Dr. Shaver concerning whether an actor intended to kill someone if they were doused in gas and lit on fire. App. 577, l. 24 – 578, l. 10. Trial counsel also agreed that intent to kill was the issue as to attempted murder and that specific intent to kill was an issue. App. 578, ll. 11-14. Finally, at the close of the evidentiary hearing, PCR counsel argued that there was opinion testimony outside the scope of expertise, "especially to the ultimate issue." App. 586, ll. 18-20.

The PCR court's ruling

In the order of dismissal, the PCR court found as to the ultimate issue that "Dr. Shaver's testimony was not a comment on the criminality or guilt of the person who committed this act against the victim, but merely a comment based on his experience that a death would result from being lit on fire," similar to the facts in *Commander*[1] rather than *Westmoreland.*[2] App. 641. The PCR court found that Dr. Shaver's testimony "did not give any indication of Dr. Shaver's opinion as to the state of mind or the person who committed the act, but merely his opinion based on his medical experience." App. 641. The PCR court ultimately determined that there was no meritorious basis for trial counsel to object to the testimony, and thus, petitioner could not show deficiency or prejudice as he failed to present sufficient evidence to prove either prong of the *Strickland*[3] test. App. 641-42.

Accordingly, the PCR court denied petitioner's application for post-conviction relief and dismissed his application with prejudice. App. 656.

Discussion

The PCR court erred by refusing to find that trial counsel was ineffective for failing to object to the testimony the state elicited from Dr. Shaver concerning whether an individual who doused someone in gasoline and lit them on fire intended to kill them, as it permitted an expert opinion on the ultimate issue of intent. Further, trial counsel's deficient performance prejudiced petitioner.

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[1] *State v. Commander*, 396 S.C. 254, 721 S.E.2d 413 (2011).

[2] *State v. Westmoreland*, 421 S.C. 410, 807 S.E.2d 701 (Ct. App. 2017).

[3] *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984).

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and that the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687. Under the second prong, petitioner must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Thomspon v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (citing *Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

As a general rule, under Rule 704, SCRE, "testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decide by the trier of fact." Rule 704, SCRE. "However, expert testimony on issues of law is usually inadmissible." *Commander*, 396 S.C. at 264, 721 S.E.2d at 418 (citing *Dawkins v. Fields*, 354 S.C. 58, 66-67, 580 S.E.2d 433, 437 (2003). Importantly, the expert may not "opine on the criminal defendant's state of mind or guilt or testify on matters of law in such a way that the jury is not permitted to reach its own conclusion concerning the criminal defendant's guilt or innocence." *State v. Prather*, 429 S.C. 583, 604, 840 S.E.2d 551, 562 (2020) (citing *Commander*, 396 S.C. at 269, 721 S.E.2d at 421).

In *Commander*, the state elicited testimony from Dr. Nichols, an expert in forensic pathology, wherein Dr. Nichols testified that he felt they were dealing with a homicide. 396 S.C.

at 259, 721 S.E.2d at 416. Defense counsel objected to the testimony as an opinion constituting a legal issue since "homicide" implied criminal culpability and argued that the testimony concerning the cause and manner of death was inadmissible under Rule 702, SCRE. *Id.* After an exchange outside the presence of the jury, Dr. Nichols was permitted to testify that his definition of homicide was when a person died as a result of another person's actions rather than an accidental or unintentional death. *Id.* at 259-260, 721 S.E.2d at 416. Further, on cross-examination, Dr. Nichols testified that he was "not claiming intent," but rather that the death was the result of someone else's actions. *Id.* at 260, 721 S.E.2d at 416.

Our Supreme Court explained that "[i]t is well established in South Carolina that a medical professional, qualified as an expert, may render an opinion concerning the scientific bases of a victim's injuries or death in a criminal trial." *Id.* at 265, 721 S.E.2d at 419. The Court determined that a qualified expert was permitted to testify about the cause and manner of death under Rule 702, SCRE. *Id.* at 266, 721 S.E.2d at 419. The Court continued, however, that "in certain circumstances, expert medical testimony of this type has the potential to invade the province of the jury." *Id.* at 268, 721 S.E2d at 420. The Court noted that other jurisdictions have considered where to draw the line and stated that "we tend to agree with those courts that have found that expert testimony addressing the state of mind or guilt of the accused is inadmissible." *Id.* In sum, our Supreme Court

> adopt[ed] a rule whereby an expert in forensic pathology's opinion testimony as to cause and manner of death is admissible under Rule 702, SCRE, so long as the expert does not opine on the criminal defendant's state of mind or guilt or testify on matters of law in such a way that the jury is not permitted to reach its own conclusion concerning the criminal defendant's guilt or innocence.

Id.

In *Westmoreland*, the coroner was offered as an expert in determining the manner of death, but the state ultimately withdrew its attempt to admit the coroner as an expert. 421 S.C. at 415, 807 S.E.2d at 704. The coroner testified as to his responsibilities as coroner which included determining any deceased's manner of death. *Id.* The coroner testified that homicide was "the intentional act of you taking the life of another." *Id.* at 416, 807 S.E.2d at 704. On appeal, the appellant contended that the coroner's testimony was impermissible opinion testimony by a lay witness and embraced the ultimate issue to be decided by the jury. *Id.* at 418, 807 S.E.2d at 705. The South Carolina Court of Appeals found that the trial court abused its discretion by admitting the coroner's improper lay witness testimony in violation of Rule 701(a), SCRE. *Id.* at 418, 807 S.E.2d at 706. This Court disagreed with the state's argument that the testimony was properly admitted because "homicide" was a term of art that did not comment on the criminality of the deceased's death. *Id.* at 420, 807 S.E.2d at 707. This Court distinguished from *Commander* where under the circumstances of that case "homicide meant only that the victim died by the act, procurement, or omission of another, and did not comment on the criminality of the death." *Id.* at 420-421, 807 S.E.2d at 707 (internal quotation marks omitted). This Court determined that the coroner's lay testimony that the death was a homicide which was defined as an intentional act, "was an opinion on Appellant's state of mind, and, thus, his guilt under the circumstances of this case." *Id.* at 421, 807 SE.2d at 707.

In this case, trial counsel was deficient for failing to object to Dr. Shaver's because the effect of Dr. Shaver's testimony was that it allowed the state to elicit testimony which provided an opinion on the ultimate issue of petitioner's intent. *See State v. Ellis*, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001) (explaining that the effect of a witness qualified as an expert in crime scene processing and fingerprint identification testifying as to his conclusion about the location

of the victim and position of his body allowed him to give is opinion on the ultimate issue of whether the appellant acted in self-defense). Importantly, petitioner was charged with attempted murder which requires the state to prove that petitioner had a specific intent to kill and placed his intent directly at issue. *See State v. King*, 422 S.C. 47, 70, 810 S.E.2d 18, 30 (2017) (stating that the offense of attempted murder requires a specific intent to kill). Because expert testimony on issues of law is usually inadmissible, and an expert may not opine on a criminal defendant's state of mind, trial counsel was similarly deficient for failing to object on this basis. *Commander*, 396 S.C. at 264, 721 S.E.2d at 418; *Prather*, 429 S.C. at 604, 840 S.E.2d at 562. In fact, during the evidentiary hearing, trial counsel agreed that specific intent to kill was at issue due to the attempted murder charge. App. 578, ll. 11-14. To that end, the PCR court erred by determining that Dr. Shaver's testimony did not comment on the criminality or guilt of the person who committed the act or give an opinion as state of mind. App. 641-42. The state expressly elicited testimony as to intent to kill where someone was doused in gas and lit on fire which allowed for an improper expert inference on the intent to kill. App. 326, ll. 14-17; *but see Commander*, 396 S.C. at 260, 721 S.E.2d at 416 (describing Dr. Nichols' testimony on cross-examination that he was "not claiming intent," whereas here no such clarification or qualification was made).

In addition, trial counsel did not articulate that his lack of objection to this testimony as violative of Rule 704, SCRE, was a strategic decision, and instead agreed that he did not object to the testimony and that intent was at issue due to the attempted murder charge. App. 577, l. 24 – 578, l. 10; 578, ll. 11-14; *See Stone v. State*, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017) (explaining that "[a]s we have often stated, counsel's strategic decisions will not be found to be deficient performance if he articulates a valid reason for employing the strategy."). Therefore, trial counsel was deficient for failing to object to Dr. Shaver's testimony as violative of Rule

704, SCRE, because he was allowed to provide an opinion on the ultimate issue of intent and the PCR court erred by determining that counsel's performance was not deficient. App. 641-42; *Strickland*, 466 U.S. at 687.

Petitioner was also prejudiced by trial counsel's deficient performance. Because intent was a central issue to petitioner's case, there is a reasonable probability that but for counsel's errors, the result would have been different. *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625; *Thomspon*, 423 S.C. at 245, 814 S.E.2d at 492. Particularly, the jury was not presented testimony that petitioner lit Cook on fire during trial, and the testimony elicited by the state about the intent to kill of an actor who doused someone in gasoline and lit them on fire was critical to the state's case and ability to meet its burden to prove specific intent. App. 120, ll. 5-8; 125, ll. 2-5, 6-17; *see also* App. 586, l. 25. Without the improper expert witness testimony, there is a reasonable probability that the factfinder would have had a reasonable doubt as to guilt, particularly related to petitioner's intent. *See Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 695) (stating that the Supreme Court explained in *Strickland* that, "the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a re4asonble doubt respecting guilt."). Moreover, the improper testimony further prejudiced petitioner because it had the potential to invade the province of the jury and went to the crux of petitioner's case. *Commander*, 396 S.C. at 268, 721 S.E2d at 420; *Prather*, 429 S.C. at 604, 840 S.E.2d at 562.

Accordingly, the PCR court erred by determining that petitioner could not show prejudice and failed to present sufficient evidence to prove either prong of *Strickland*. App. 641-42; *Strickland*, 466 U.S. at 688.

II.

The PCR court erred by refusing to find trial counsel ineffective for failing to object to Dr. Shaver's testimony because his testimony exceeded the scope of his expertise, and thus, petitioner was prejudiced by trial counsel's deficient performance.

Relevant facts

Evidentiary hearing

During petitioner's evidentiary hearing, petitioner testified that, regarding the state's question as to whether an actor intended to kill, there was no objection made, and "Lee Cole was, it seemed like, just checked out." App. 556, l. 21- 557, l. 2. Petitioner testified that Cook testified at trial and did not state that he doused her in fire, instead she testified that she recalled petitioner standing in the house holding a gasoline can but was not attempting to harm her. App. 557, ll. 3-11. On cross-examination, he agreed that there were "a lot of experts testifying a lot of stuff. Some outside their scope, some not." App. 564, l. 25 – 565, l. 4.

Trial counsel then testified that "the circumstantial evidence and the evidence of the expert was, in [his] opinion, overwhelming." App. 566, ll. 13-16. He continued that as to witness testimony outside the scope of their expertise, he did not believe, based on the area the experts were qualified in, that there was a "basis to object to those couple of opinions that they had that are at issue." App. 569, ll. 3-19. On cross-examination, trial counsel agreed that he did not object to the expert testimony from Dr. Shaver concerning whether an actor intended to kill someone if they were doused in gas and lit on fire. App. 577, l. 24 – 578, l. 10.

At the close of the evidentiary hearing, PCR counsel argued that there was opinion testimony outside the scope of expertise. App. 586, ll. 18-20. PCR counsel argued that Cook

had very little recollection of the incident or being set on fire. App. 586, ll. 21-25. PCR counsel emphasized that the jury heard no testimony that petitioner lit Cook on fire. App. 586, l. 25.

The PCR court's ruling

The PCR court determined that trial counsel credibly testified that he did not believe a basis existed to object as to the alleged improper testimony because it pertained to matters within the witnesses' expertise, and he credibly testified that Dr. Shaver appropriately testified based on his experience and that there was no objectionable basis to the testimony. App. 617. The PCR court described that, "Dr. Shaver testified to his opinion that a person who doused someone in gasoline and lit them on fire would likely lead to that individual's death; based on his experience with treating burn victims—notably, it was presented at trial that Cook nearly succumbed to her injuries, and [petitioner] was tried for attempted murder." App. 617. The PCR court determined that the expert witness opinion was based on experience, knowledge, training in his field, and based on facts supported by the evidence presented at petitioner's trial. App. 617. The PCR court concluded that there was no meritorious basis for trial counsel to object to the witness testimony, and petitioner could not establish that trial counsel was constitutionally ineffective for failing to do so on that basis. App. 618. The PCR court determined that petitioner failed to present sufficient evidence to prove either prong of the *Strickland* test. App. 618.

Discussion

The PCR court erred by refusing to find that trial counsel was ineffective for failing to object to the testimony the state elicited from Dr. Shaver concerning whether an individual who doused someone in gasoline and lit them on fire intended to kill them, as it was outside the scope of Dr. Shaver's expertise and was not based upon the specialized knowledge of the expert. Moreover, trial counsel's deficient performance prejudiced petitioner.

Under Rule 702, SCRE, "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. Notably, "an expert's testimony may not exceed the scope of his expertise." *Commander*, 396 S.C. at 264, 721 S.E.2d at 418 (2011) (citing *Ellis*, 345 S.C. at 175, 547 S.E.2d at 490.

For example, in *Ellis*, a sergeant was qualified as an expert in crime scene processing and fingerprinting identification which qualified him to testify as to measurements taken at the scene, the recovery of shell casings, and identification of blood stains. 345 S.C. at 177, 547 S.E.2d at 491. Our Supreme Court determined that the sergeant exceeded the scope of his expertise when he was permitted "to impart to the jury his conclusion, drawn from these measurements and observations, regarding the location of the victim and the position of his body . . . at the time of the shooting." *Id.* at 177-78, 547 S.E.2d at 491 (internal quotation marks omitted). The effect was that the sergeant was allowed to provide an opinion on the ultimate issue of whether the appellant acted in self-defense. *Id.* at 178, 547 S.E.2d at 491. Citing Rule 704, SCRE, our Supreme Court stated that was error. *Id.* The Court continued that the error was not harmless because the sergeant "was not qualified to give such an expert opinion," and "[a]n officer's improper opinion which goes to the heart of the case is not harmless." *Id.*

Here, the state elicited testimony from Dr. Shaver of his medical opinion as to whether if someone was doused in gas and lit on fire, the actor would intend to kill that person. App. 326, ll. 14-17. The form of the state's question went too far, and allowed Dr. Shaver to answer that he thought the act would lead to death. App. 326, ll. 14-17. Trial counsel was deficient for failing to object. *See generally* App. 326; App. 577, l. 24 – 578, l. 10. While Dr. Shaver could testify

that patients may die after suffering third degree burns to sixty percent of their body, he was not qualified to testify as to the actor's intent.

Particularly, during trial, Dr. Shaver was qualified to testify as an expert in critical care and internal medicine, which based on his testimony, his expertise included taking care of patients who were critically ill and patients suffering from organ failure. App. 303, l. 11 – 304, l. 1; 304, ll. 14-20. Thus, it was proper for Dr. Shaver to testify concerning his treatment of Cook, the management of the burns she suffered, the treatment of her organ failure, and the process of debridement and grafting. App. 305, ll. 15-25; 308, l. 1 – 313, l. 17; 314, l. 21 – 322, l. 17. It was improper, however, for the state to elicit testimony concerning petitioner's state of mind, as that was squarely outside the scope of Dr. Shaver's expertise and could not have been based upon his medical experience treating burn victims. *See* Rule 702, SCRE; *see also Commander*, 396 S.C. at 264, 721 S.E.2d at 418; *Ellis*, 345 S.C. at 175, 547 S.E.2d at 490. As in *Ellis*, Dr. Shaver exceeded the scope of his expertise, which was confined to his care and treatment of Cook and his medical experience with critical care and internal medicine, when he was permitted to impart his conclusion to the jury concerning the intent underlying the act. *Ellis*, 345 S.C. at 177-78, 547 S.E.2d at 491. Therefore, trial counsel was deficient for failing to object to Dr. Shaver's testimony as exceeding to scope of his expertise and the PCR court likewise erred by so finding. App. 617; *Strickland*, 466 U.S. at 687.

Petitioner was also prejudiced by trial counsel's deficient performance as there is a reasonable probability that but for counsel's errors, the result would have been different. *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625; *Thomspon*, 423 S.C. at 245, 814 S.E.2d at 492. Particularly, because Dr. Shaver's opinion exceeded the scope of his medical expertise and commented on intent, his opinion rendered a legal conclusion rather than a conclusion based

within his specialized knowledge which prejudiced petitioner as Dr. Shaver's expert testimony invaded the province of the jury. *Ellis*, 345 S.C. at 177-78, 547 S.E.2d at 491. Importantly, our Supreme Court has explained that "[o]rdinarily, the existence of overwhelming evidence does not automatically preclude a finding of prejudice." *Smalls*, 422 S.C. at 189, 810 S.E.2d at 844 (citing *Simmons v. State*, 331 S.C. 333, 503 S.E.2d 164 (1998)) (internal quotation marks omitted). In fact, our Supreme Court explained that for evidence to be overwhelming, meaning that it precludes a finding of prejudice, "the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of 'a reasonable probability . . . the factfinder would have had a reasonable doubt; cannot possibly be met." *Id.* at 191, 810 S.E.2d at 845. In petitioner's case, there is no such overwhelming evidence to categorically preclude a finding of prejudice. Even further, without the improper expert witness testimony exceeding the scope of Dr. Shaver's expertise, a probability sufficient to undermine confidence in the outcome of the trial exists. *Thomspon*, 423 S.C. at 245, 814 S.E.2d at 492; *Rutland*, 415 S.C. at 577, 785 S.E.2d at 353.

CONCLUSION

Therefore, based on the foregoing argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of September, 2025.