STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals

The Honorable Perry H. Gravely, Post-Conviction Relief Judge

RONNIE C. SWOFFORD,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

Appellate Case No. 2025-002073

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE ISSUE

The Court of Appeals erred in its application of *Strickland's* two-pronged test by failing to acknowledge that reference to "blood" on the wall did not negate Swofford's defense, and that the evidence, when examine collectively, reflects that the victim's identification of Swofford and description of the shooting is corroborated by forensic evidence.

STATEMENT OF THE CASE

Swofford was indicted at the November 2009 term of the Greenville County grand jury for 1st degree burglary (2009-GS-23-9403), assault and battery with intent to kill (2009-GS-23-9404 count 1), possession of a weapon during the commission of a violent crime (2009-GS-23-9404 count 2), and possession of a pistol by a person convicted of a violent crime (2009-GS-23-9405). In its September 2011 term, Swofford was indicted for assault with intent to kill (2011 -GS-23-7263).

On May 14-17, 2012, Swofford's case was called to trial with the Honorable Edward W. Miller presiding. Andrew Johnson, Esq., and Gerald Wilson, Esq., represented Swofford on the charges and Assistant Solicitor Kris Hodge prosecuted the case. At the conclusion of trial, the jury found Swofford guilty as indicted and Judge Miller sentenced Swofford to concurrent terms of life without parole for burglary 1st degree and assault and battery with intent to kill, 5 years for possession of a pistol by a person convicted of a violent crime, and 10 years for assault with intent to kill. Due to the life sentence for count one, the judge did not sentence Swofford for possession of a weapon during the commission of a violent crime (2009-GS-23-9404 count 2).

A timely notice of appeal was filed on Swofford's behalf at the South Carolina Court of Appeals. The appeal was dismissed at Swofford's request after his motion to relieve LaNelle DuRant, Esq., of the South Carolina Office of Appellate Defense was denied. Swofford then filed a *pro se* motion for a new trial which was subsequently dismissed along with the appeal of its dismissal. The Remittitur was issued July 9, 2014.

Swofford filed a PCR application on July 8, 2014 (2014-CP-23-3767). An evidentiary hearing was convened on October 21, 2015, at the Greenville County Courthouse before the Honorable Perry H. Gravely. Mills Ariail, Esq., represented Swofford and Assistant Attorney

General Karen Ratigan represented the State. The PCR court denied relief on December 30, 2015, by Order filed January 7, 2016. Swofford filed an untimely Motion for Reconsideration on February 2, 2016, which Judge Gravely denied on February 18, 2016. Swofford then filed a notice of appeal which was dismissed as untimely by Order filed September 27, 2018.

Swofford filed a second PCR application (2018-CP-23-5662) on November 6, 2018. Swofford alleged ineffective assistance of PCR counsel for failure to timely file an appeal from the Order filed on January 7, 2016, denying post-conviction relief. He further requested to argue issues as to the chain of custody of DNA evidence as outlined in his Motion for Reconsideration so that the issues may be adequately preserved for the appellate record.

An evidentiary hearing was convened on November 8, 2021, via CISCO WEBEX virtual platform in the Thirteenth Judicial Circuit, before the Honorable G.D. Morgan, Jr. Swofford was present via video and telephonic audio and was represented by Susannah C. Ross, Esq. Assistant Attorney General Taylor Z. Smith represented the State. After considering the testimony and the record, the PCR court granted the *Austin* claim finding that Swofford did not knowingly and voluntarily waive the appeal of the denial of his first PCR application.

The South Carolina Supreme Court received Swofford's Notice of Appeal on December 10, 2021, appealing Judge Gravely's Order of Dismissal of his previous PCR action filed on January 7, 2016. Swofford filed the Petition for Writ of Certiorari and Appendix on July 11, 2022, raising the following issue:

> Was Swofford denied effective assistance of counsel where counsel failed to challenge the prosecution's claim that Swofford'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 Swofford's alibi?

On the same day, Swofford amended the petition to Petition for Writ of Certiorari Pursuant to *Austin v. State*. On November 27, 2022, the State submitted a letter in lieu of a return, notifying the court that the State did not intend to submit a return. Swofford submitted a reply to the letter return on December 7, 2022. The State submitted its return to the *Austin* petition on December 7, 2022. The matter was transferred to the Court of Appeals on January 5, 2023. The Court of Appeals granted certiorari and ordered the parties to dispense with further briefing.

On July 22, 2024, Swofford filed his brief. On November 20, 2024, the State filed its brief. Oral argument was held on June 4, 2025. On August 13, 2024, the Court of Appeals reversed and remanded the PCR Court's order denying post-conviction relief and remanded to the General Sessions Court for a new trial. The State filed the Petition for Rehearing on August 28, 2025, which the Court of Appeals denied by Order on September 9, 2025.

The State now submits the Petition for Writ of Certiorari in this Court.

PETITIONER'S STATEMENT OF FACTS

Curtis Wooten ("the victim") met Swofford while the two were in prison when they were housed in the same room for a year or more, and the two became friends. (App. 59-61, 113). They lost touch with each other when the victim was released from prison but reconnected a few months before the shooting in the underlying criminal case when they bumped into each other at a gas station. (App. 61-62). They began seeing each other about four to five times a week, usually spending time together at the victim's home. (App. 62-63). The victim and his girlfriend Danielle Edwards cohabitated at the time and were both living on government assistance checks of various types. (App. 63-64). The victim kept all his money on him in the form of cash and did not have a bank account. (App. 65-66). He testified at trial he lent about $750 to Swofford about two days before the shooting, expecting to be repaid a few days later. (App. 67-68, 88). Instead of meeting the victim to repay him, Swofford set up meetings with the victim by text message and then failed to keep them. (App. 68-69).

Sometime after 2AM the morning following the night at which Swofford was supposed to repay the victim, the victim returned to his home after having gone to the grocery store. (App. 69-70, 86). Swofford had texted the victim to say that he would not meet him that night as they had originally planned. (App. 94). When the victim sat his groceries on his kitchen counter, he saw a man behind him; the victim recognized the intruder's .40 caliber Hi Point pistol and saw "his eyes and stuff" because the intruder wore a mask that only partially covered his face. (App. 70-73). The victim characterized the mask as ski mask that lacked a nose bridge covering, which allowed him to see the intruder's eyes. (App. 114-15). He knew the pistol because the intruder had shown it to

him a few days beforehand and said that it was his brother's.[1] (App. 73, 125-127). The intruder called out the victim's name and then shot him when the victim turned towards him. (App. 71). Edwards ran away and the victim saw the intruder shooting at her as she did so. (App. 71). He shot the intruder once with a pistol, and the intruder fled. (App. 71-72). The victim called 911 and he and Edwards drove to the hospital, with Edwards also making a call to 911 once they were on their way. (App. 74-75, 83).

The victim maintained he recognized the intruder as Swofford. (App. 71). He told a law enforcement officer at the hospital that Swofford shot him and about the pistol Swofford had used. (App. 84-85). Almost two months after the shooting, when the victim woke up from his post-shooting coma, he signed a statement for officers that identified Swofford as the shooter. (App. 112-113). He testified Swofford was the intruder and the pistol Swofford used had been the same one Swofford had shown to him the day before the shooting. (App. 85-87). He recognized Swofford's voice when Swofford called out his name before shooting him. (App. 131). He assumed that Swofford had shot him to take his money. (App. 86). On cross-examination, the victim agreed he had left a voicemail for someone shortly before the shooting in which he may have threatened to cut his or her head off over some snack cakes. (App. 122-124). He also admitted that he had taken 75 milligrams of methadone about fifteen hours before the shooting but denied he had been taking any other medications at the time. (App. 129-130).

Sergeant David Hayes of the Greenville County Sheriff's Office responded to the victim's 911 call, arriving at the hospital at approximately 2:45AM on the morning of the shooting. (App. 142-143). Sgt. Hayes was able to speak briefly with the victim at the hospital, and the victim told

[1] The victim clarified that he could not tell that the pistol that Swofford was using during the shooting was a .40 caliber one, but he recognized Swofford and saw that Swofford was holding a Hi Point and assumed that it was the same .40 caliber Hi Point that Swofford had shown him the day before. (App. 127).

him that an unknown assailant in dark clothing entered his home and started shooting at him, and then identified Swofford as the shooter, explaining that Swofford owed him money. (App. 143-144). The victim told Sgt. Hayes that he was not "totally certain" Swofford was the intruder but said Swofford owned a .40 caliber handgun like the one used to shoot him. (App. 144). The victim had lost over thirty to forty percent of his blood from the gunshot wound, was intubated, had his spleen and one of his kidneys removed, had a portion of his small intestine and colon removed, underwent a tracheostomy due to his going into respiratory failure, and had to have his abdomen kept open for multiple days. Additionally, the victim suffered complications from his injuries, such as having open wounds that needed tending, infections with a fungus in his blood stream, and developing pneumonia. (App. 136-139).

Officer John Derby of Greenville County Forensics went to the victim's home to collect evidence. (App. 151-153). Officer Derby collected three spent cartridge casings on the floor. (App. 160, 168, 189). Officer Derby located a projectile hole in the wall in the victim's kitchen and was able to recover a projectile and a projectile jacket from the area underneath a kitchen cabinet. (App. 162-164). That projectile jacket was admitted into evidence as State's Exhibit 48. (App. 173). It was a fired bullet jacket, which the State's expert firearms examiner testified was consistent with a .380 auto caliber projectile. (App. 226). The projectile was admitted as State's Exhibit 49. (App. 173-174). It was a fired bullet specimen, which the firearms examiner identified as having been a .40 caliber projectile, which was more than likely manufactured by Hi Point.[2] (App. 226-227). Officer Derby found what appeared to be a wad of fabric next to the projectile hole and noted the

[2] The firearms examiner testified that the rifling characteristics imprinted on State's Exhibit 49 when it was fired matched Hi Point only, according to a rifling characteristics database maintained by the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives, but admitted that it was possible that there were other manufacturers with those characteristics of which the agencies were not aware. (App. 230-231).

area around the hole had "stains" that he did not see appearing anywhere else on the wall. (App. 164-165). He cut away that section of the wall so he could collect it for the investigation due to the fact that section contained "suspected blood" and fabric that was visible. (App. 165-166, 177-178). Officer Derby testified he determined the projectile had "blood and possible tissue" and "possible suspected tissue or fabric" inside of it. (App. 172, 184).

Sergeant Darwin Shaw of the Department of Public Safety's Forensics Division went to the victim's home at the request of Investigator Christopher Miller of the Greenville County Sheriff's Office to further the investigation. (App. 198-203). Sgt. Shaw went to the scene with the portion of wall Officer Derby had already removed so that he could put it back in place to see if that helped him gather more information or evidence. (App. 204-05). Sgt. Shaw cut away an even-larger piece of the wall, at which point he found a projectile between some black fiber board and a brick wall that divided the kitchen from the bathroom. (App. 209). He collected that projectile, which was admitted into evidence as State's Exhibit 64. (App. 210-11). He then saw there was another projectile hole leading from the kitchen wall into the bathroom, he went into the bathroom and found another projectile that had entered the bathroom next to a toilet. (App. 212-13). He collected that projectile, which was admitted into evidence as State's Exhibit 55. (App. 213- 14). He testified that the fact that this projectile was still jacketed indicated it had not hit anything hard enough to cause the jacket to separate from the remainder of the projectile. (App. 214).

Sergeant David Weiner of the Greenville County Sheriff's Office searched the victim's home right after 4AM. on the morning of the shooting. (App. 233-34). He observed a hole in the wall between the living room and kitchen that had a "little bit" of fabric next to it and what appeared to be blood around it. (App. 235). He also saw the victim's mobile phone had been exchanging text messages after or around midnight with another number that was attributed to

"Ronnie" in the victim's phone. (App. 236, 241-242). He called the number for "Ronnie," but received no response until Swofford returned his call two days later. Swofford admitted he had been communicating with the victim that night but said he could not remember why he had been looking for the victim so early in the morning, denied having any involvement in the shooting of the victim, and did not express any concern about the victim or inquire about the victim's condition. (App. 237-239, 306).

Verona Gibson, an evidence processing technician in the DNA Department at the South Carolina Law Enforcement Division ("SLED"), testified she performed a test for the presumptive presence of blood on the section of wall cut out of the victim's home and collected a possible hair and what appeared to be fibers. (App. 246, 252). The test was negative for the presence of blood. (App. 253). Ila Simmons, a trace evidence examiner at SLED, determined the fibers collected from the wall cutout were black polyester fibers. (App. 255-261). Adrian Hefney, a forensics DNA analyst with SLED, compared the DNA profile she was able to take from the swab of the projectile jacket admitted as State's Exhibit 48, which she characterized as "suspected blood tissue from the kitchen floor," to the DNA sample taken from Swofford. (App. 265-270). She determined the two DNA profiles matched, and the probability of randomly selecting an unrelated individual with a matching DNA profile was approximately one in 24 quadrillion. (App. 270-271). She also determined the DNA profile of the hair collected from the wall cutout matched Swofford's DNA profile, and with the same one-in-24-quadrillion probability as the projectile swab. (App. 274).

Inv. Miller was the Sheriff's Office's lead investigator into the shooting. (App. 297-98). Edwards told him at the hospital after the shooting that a masked intruder dressed in black entered the victim's home and shot him, that she ran for the door and heard a shot, and that she learned afterwards that the victim had shot the intruder. (App. 301). She could not identify the intruder.

(App. 301). Describing the scene at the victim's home, Inv. Miller testified there was blood near a phone line in the kitchen and blood and tissue "splattered" on the wall near a "gunshot projectile on the paneling . . . ." (App. 302). He tried to contact Swofford using the phone number Sgt. Weiner previously used, but Swofford never called him back. (App. 306-307). Inv. Miller sent a swab from the projectile found on the floor of the victim's kitchen, among other samples, to SLED for blood DNA analysis. (App. 311). He tried again to make contact with Swofford by going to his residence. (App. 314-316). He secured arrest warrants for Swofford after SLED's preliminary analysis showed Swofford's DNA matched the DNA taken from one of the items he submitted for testing. (App. 316-17).

Jeffrey Hunter Smalley testified as a defense witness. (App. 363). He had been working for Swofford on various metal fabrication jobs for about two to three years prior to the shooting. Smalley testified he was "pretty sure" he and Swofford went to high school together and had known Swofford about 20 years prior to working with him. (App. 363-365). He agreed that he had been friends with Swofford for some years. (App. 370-371). He testified when Swofford was working with him on July 22, he noticed Swofford's arm was injured and covered with a gauze bandage, which looked as if it had been put on by Swofford himself. (App. 369-370). He said the wound was on Swofford's left arm and was consistent with two pierce marks that looked as if something had passed through the arm. (App. 370). Swofford told him that he had gotten the injury when a friend's gun had discharged. (App. 372-373). He testified he did not know what Swofford was doing in the early morning hours of July 22. (App. 373).

Swofford's mother Phyllis Swofford testified Swofford's birthday is on July 25th. (App. 374). She noticed a bandage on Swofford's left arm on July 23rd and described the bandage as a "band-aid." (App. 377-379). She applied an antibiotic ointment to it and replaced the "band-aid,"

and thought that the wound, which looked like a "burnt place," must have been caused by Swofford's pressure washing wand. (App. 378-379). On cross-examination, she testified she knew Swofford had had "the place" on his arm on July 23rd and then said after a follow-up question from the solicitor that Swofford had two "places" on his arm. (App. 385). She agreed she had not told law enforcement or the solicitor about her recollection of the injury to her son's arm before trial, even though she had learned it was an important fact in the case. She explained her failure to do so by testifying that she does not drive and was unable to drive herself to Greenville, although she admitted that she had a phone. (App. 383-386).

The defense called Charlie Duffie, who testified he had known Swofford since they worked together in the late 1980s and that he and Swofford had become "fairly close" friends over the past seven or eight years.[3] (App. 390-391). Duffie later agreed he and Swofford were "real close." (App. 396). Duffie testified he noticed a bandage on Swofford's left arm on July 23rd when they were celebrating Swofford's birthday. (App. 391-393). He said the bandage consisted of two band-aids, one on the front of Swofford's forearm and another on the rear. (App. 393). He testified Swofford peeled off the front bandage to show him the wound, which he characterized as a round, cigarette-like burn. (App. 394). Duffie admitted to his criminal record, which included convictions for failure to stop for a blue light, assault and battery of a high and aggravated nature, shoplifting, financial transaction card fraud, and forgery. (App. 394-95). On cross-examination, Duffie testified he learned immediately after Swofford was arrested that the injury to Swofford's arm was significant, but he did not go to police with that information because he did not think the information was relevant. He added he figured that Swofford and Swofford's lawyer would come

[3] The solicitor's investigator reported during trial that he had seen Swofford's girlfriend Shannon Lee Lawter and Duffie whispering outside the courtroom despite the sequestration order that was in effect. Lawter denied that she had communicated with Duffie. The trial court warned defense counsel that witnesses would go to jail if they defied the order. (App. 400-404).

to him if they had questions about it. (App. 397-399). He did not know Swofford's location in the early morning hours of July 27, 2009. (App. 399).

Shannon Lee Lawter testified she had been in a relationship with Swofford for six years and she and Swofford shared a two-and-a-half-year-old child. (App. 405). She agreed that she had a previous conviction for filing a false police report. (App. 419). She testified Swofford's birthday is July 25th and she was with Swofford at a birthday meal for him at a Japanese restaurant on July 25, 2009. (App. 406-408). She said she first noticed an injury to Swofford's left arm around July 22nd and testified she saw "a place" on the arm, describing it as a burn or a graze wound. (App. 408-10). Lawter testified Swofford arrived home from work at about 1:30AM on July 27, 2009, and that it was not unusual for Swofford to get home from work early in the morning. (App. 413-14). She said Swofford did not leave once he arrived home, until he left to go to Charlotte that same morning at about 6AM. (App. 416-17). She testified that she told the law enforcement officers who came to the house investigating the shooting that Swofford had not been shot because she thought that the injury looked like a burn. (App. 418-419). She testified she told Swofford the officers had come to the home to ask to speak to him, and that Swofford told her he did not know why they were looking for him. (App. 426-427). Swofford was still driving her to work, and she admitted she would experience financial hardship if he were to go to prison. (App. 424-25). Lawter said that Swofford told her initially he had injured his arm on a lawn mower. (App. 428-429). She said that she believed his explanation because the injury was not a big wound and looked "like a graze to [her], like a scratch pretty much." (App. 444). She said Swofford later told her the victim had accidentally shot him on July 21st and he had not reported it to the police so the victim would not have to go to jail; she testified that she did not relay that information to police because she did not trust them. (App. 445-447). She explained her statement to officers that Swofford was working

in Columbia when they came to the house to speak to him by saying that he had actually been in Atlanta and that she had been confused when she talked to the officers. (App. 430). She denied she told her former neighbor Deborah Martinez that Swofford had confessed to her that he shot a man in Greer and that she could use that information to "bury him." (App. 442). She denied she told Martinez Swofford told her details about the shooting and denied that she told Martinez that she would lie for Swofford at his trial. (App. 442). She denied sending text messages to Stephen Parham saying that he needed to be at Swofford's trial. (App. 443). She denied she and Swofford had discussed what they would say while on the witness stand at trial, but later admitted, at least to some extent, she had discussed the case with Swofford. (App. 443, 447-448).

Lawter's son, Jordan, (Swofford's stepson), testified Swofford was like his father. (App. 449). He testified Swofford was in Swofford's bedroom at 2:20AM on July 27, 2009, and that he went to Charlotte with Swofford later that morning at 6AM/ (App. 452-453). He said he saw a bandage on Swofford's arm when they went to Charlotte, but he did not know the details of Swofford's injury. (App. 459). Jordan still lived with Swofford. (App. 455). He said he did not tell the officers when they showed up to arrest Swofford that Swofford had been at home at the time of the shooting because he did not want to talk to officers who were not there for him and because he did not know why they were there. (App. 461-462). He agreed he wanted Swofford to be at home with him and testified, "I'll do whatever I can for him." (App. 462).

Otis Pullen testified that he had known Swofford for twelve or thirteen years - maybe more. Swofford testified he met Pullen when they were both imprisoned together. (App. 463, 603-604). Pullen said he saw Swofford's vehicle drive by him at about 1:15AM on July 27, 2009, and he called Swofford and had a phone conversation with him. (App. 465-468). He put that phone call between 1:30 and 1:35AM (App. 469). He said that he did not share his information with officers

even though he was aware that Swofford had been arrested. (App. 471-472). He did not know Swofford's location at the time of the shooting. (App. 472).

Stephen Parham, who has a learning disability and is Martinez's son and Swofford's former neighbor, testified that he is friends with Swofford. (App. 472-743, 482, 628). He claimed to have talked to Swofford right outside Swofford's home at 1:36AM on July 27, 2009, and that Swofford went inside his house after they spoke and did not leave again. (App. 478-479). Lawter sent a text message to him on the night before his testimony telling him that a warrant would be issued for his arrest if he did not come to trial. (App. 481). Lawter drove him to court for his testimony and asked him as she exited the courtroom after her testimony if he had been talking to the prosecution. (App. 481-482). He admitted that he told the solicitor's investigators the week before trial that he was not "100 percent certain" that Swofford had gone into his house that night. (App. 482).

When he met with trial counsel, Swofford had driven him to the appointment and bought him breakfast along the way, and told him that, when the case was over, he and Swofford would "hang out together, catch up on lost time," and that Swofford would get a gym membership and show him how to work out. (App. 483). He agreed Swofford had shown his entire case file to him and said that he wanted him to testify that he saw Swofford walk into his house at a specific time. (App. 483). He admitted that he had told the solicitor's investigator the week before trial that he wanted the case to be over because he "[could not] stand being in front of anybody, trying to put somebody away, not knowing what the person may or may not do," and that he told the investigator that he was scared. (App. 486). He agreed that he told the investigator that he was feeling threatened and wanted the case over. (App. 486-487). He agreed that he had started to feel as if Swofford had been trying to manipulate him to get him to say certain things. (App. 487).

Swofford's brother James B. Swofford testified that he was at the Japanese restaurant with Swofford and others on Swofford's birthday. (App. 497-498). He identified some photographs as those that he took with his mobile phone while at that birthday party. (App. 499-500). He explained that one of the photographs showed the bandage on Swofford's arm. (App. 499).

Swofford testified in his own defense. After admitting to a redacted version of his own criminal record, Swofford testified that he became friends with the victim in prison and then reconnected with him on the outside. (App. 500-518). He testified that the victim had exaggerated the number of times on which they met, though. (App. 520-522). He denied that he had borrowed money from the victim but said that he had reluctantly accepted a gift of $850 from the victim and deposited $750 of it into his account. (App. 530, 549-550, 594). He said that he stopped by the victim's home on July 21st, that the victim appeared to be high at that time, that the victim accidentally shot him in the arm, and that he did not seek medical attention for the wound so that the victim would not get in criminal trouble for having the firearms, even though he has acquired immunodeficiency syndrome ("AIDS"). (App. 532-542). He went to his home, cleaned it, and wrapped it in gauze bandages. (App. 542). Since he and Lawter owned dogs, he had medical supplies for dogs at home. (App. 542). He did not seek medical attention other than to ask a veterinarian's advice. (App. 542). He would not have been surprised to know that his blood was in the victim's home due to the accidental shooting. (App. 542).

Swofford said that he originally told Lawter that he had injured his arm on the lawnmower and that he told the version from his trial testimony with her right before he had been arrested. (App. 544-545). Swofford testified that he went to his birthday dinner on July 25th, and that the photographs taken there show the injury to his arm and that others saw his injury. (App. 552-553). He kept the wounds covered because they looked like burns, and he was wearing a butterfly

bandage at some point. (App. 553). He said that, on the morning of the shooting, he left work at 12:05AM, dropped an employee off at the employee's home at 12:35AM, received a call from Pullen, arrived at home at 1:35AM, and stayed there until 5:55AM. (App. 557-565). He said that he did not return the officer's phone call because he forgot to do so and was not thrilled to talk to officers. (App. 566-567). He denied that he shot the victim. (App. 569).

Swofford testified that, when he saw his AIDS counselor on July 21st, his counselor did not raise concerns about the bandage on his arm and told him later that he had not noticed the bandage. (App. 576-578). He said that he initially told three people about the accidental shooting: Hunter Smalley, Duffie, and a co-worked named Terry. (App. 581). He did not seek medical attention for his wound, despite his medical condition, out of "loyalty" to the victim due to their friendship and because he could see that the bullet had exited his arm. (App. 582-583). He said that he rinsed his arm with a garden hose in front of the victim's house after the accidental shooting and decided then that he did not need to seek medical attention because "it was just an incident in the arm." (App. 592). While Swofford was testifying about the mechanics of the accidental shooting, the solicitor asked him if he was crafting a narrative to explain the bullet hole and his DNA splattered on the victim's wall. (App. 589). He could not remember what happened to the clothes he was wearing during the accidental shooting. (App. 590-591). He knew that officers wanted to talk with him and check him for a gunshot wound after the victim was shot, and he was unsure if the victim had told them about the accidental shooting. (App. 601). Even after the officers arrested him for shooting the victim and were taking photographs of the gunshot wound on his arm, he did not tell the officers about any of the witnesses who allegedly saw him during the early morning hours of the shooting or about the alleged accidental shooting because he wanted to exercise his right to remain silent, although he was making statements to the officers. (App. 615-618).

Martinez testified during the State's case-in-reply that she was Swofford's and Lawter's neighbor. (App. 625). She testified that Lawter had visited her in February of 2019 after having had an argument with Swofford and said that Swofford told her that he had shot the victim in self-defense, and that Lawter said that she did not want to testify against Swofford because they had a son together and that she would not say in court what Swofford had told her. (App. 629-633).

Inv. Miller also took the stand again. He testified that Swofford's witnesses had not told him the things about which they testified. (App. 635-636). After trial counsel said outside the presence of the jury that the determination of whether a blood smear on a wall is "fresh" was a matter within lay knowledge, Inv. Miller testified before the jury that a photograph of the victim's wall appeared to show "fresh blood, tissue, [and] hair." (App. 639-642). He believed that the blood was "fresh" because it was red and still in a liquid state. (App. 642, 645).

During closing arguments, the issue of the suspected blood on the wall came up again. Trial counsel admitted that Swofford's DNA was in the victim's home, but argued that the State had not performed analysis to determine the length of time that the blood had been on the victim's wall, disagreed with Inv. Miller's opinion that the blood was fresh, and said that the officers must have told the victim about the presence of Swofford's blood on the wall before the victim gave his written statement. (App. 654-655, 665). The solicitor argued that Swofford's allegation that his body tissue, hair, and suspected blood had been in the victim's home for the six days between the alleged accidental shooting and the shooting of the victim was not credible, argued that the body tissue and blood were fresh because the blood on the wall had not yet turned brown when the photograph of it had been taken, and said that the State had tissue, hair, and blood DNA that put Swofford at the crime scene. (App. 691, 703). The jury found Swofford guilty as indicted on all counts, and the trial court issued the mandatory life sentences. (App. 725-726, 731).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if there is probative evidence in the record to support them. *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. *Goins v. State,* 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The Court of Appeals erred in its application of *Strickland's* two-pronged test by failing to acknowledge that reference to "blood" on the wall did not negate Swofford's defense, and that the evidence, when examine collectively, reflects that the victim's identification of Swofford and description of the shooting is corroborated by forensic evidence.

In reversing the PCR court's denial of relief, the Court of Appeals rejected the PCR court's ruling on both the deficiency and prejudice prongs outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). The Court of Appeals found that the PCR court erred in finding trial counsel was not deficient because he did not articulate a reasonable trial strategy for his failure to object to the State's characterizations of the stain on the wall of the victim's home as "fresh" blood. *Swofford*, at 6. The Court of Appeals further found that Swofford was prejudiced by the failure to object because it "significantly undermined [Swofford's] defense," and that the prejudicial effect of the failure to object was heightened by the impeachment of the defense witnesses. *Swofford,* at 7.

The State submits that the Court of Appeals merely conducted a surface level analysis of the importance of the purported blood stain and failed to consider the entirety of the record when evaluating *Strickland* deficiency and prejudice.

In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland.* First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*). The second prong of the *Strickland* analysis is that the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer's] unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386

S.E.2d at 625. "Even if a defendant shows that particular errors of counsel were unreasonable, the defendant must show that they actually had an adverse effect on the defense." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted).

The Court of Appeals found that the evidence does not support the PCR court's finding that trial counsel was not ineffective for failing to object to the "blood" evidence. The Court of Appeals opined that the misstatements invalidated Swofford's defense that he had been shot at the scene days prior, specifically noting that trial counsel "compounded the error" in closing arguments when he argued that if the "blood" had been fresh, it would have been "dripping."

SLED Technician Gibson testified that the section of wall cut out of the victim's home tested negative for the presence of blood. (App. 253). Subsequent to her testimony, the State and trial counsel made reference to blood being on the wall despite the presentation of testimony confirming otherwise. Even so, trial counsel's reference to the "blood" and that it was not "fresh," still does not harm Swofford's defense. In fact, the insinuation offers support to Swofford's version of events that he was in fact shot at the crime scene, and that the blood is not fresh because it occurred days before it was discovered. Simply put, "old" blood offers more evidentiary support to Swofford's version of events rather than no blood at all. Swofford even testified that he would not be surprised if his blood was at the scene due to the accidental shooting. (App. 542). Even if this Court finds that trial counsel's reference to the "blood" was unreasonable, it must be shown that the reference "actually had an adverse effect on the defense." *Strickland* at 693.

The Court of Appeals identified that the evidence against Swofford was the victim's identification of him and the presence of Swofford's DNA at the scene; however the court also noted that the victim expressed uncertainty with the identification in the beginning of the investigation. The Court of Appeals' evaluation of the evidence is a reductive overview of the

evidence the State presented against Swofford. When the evidence is reviewed collectively, rather than independently of each other, the purported blood stain on the wall has no bearing on the remaining evidence supporting Swofford's guilt. The solicitor explained as such in closing arguments. (App. 698-699).

As to the Court of Appeals' hesitancy regarding the victim's identification, when the forensic evidence is also considered, the credibility of the identification is strengthened. The victim testified that he considered him and Swofford to be good friends and that they often hung out together several days of the week. (App. 60-62). The victim testified that he recognized Swofford's voice and eyes through the cuts of the ski mask he was wearing. (App. 70-71). At the hospital, the victim told law enforcement that Swofford had shot him and identified the pistol he used. (App. 84-85). Almost two months after the shooting, when the victim woke up from his post-shooting coma, he signed a statement for officers that identified Swofford as the shooter. (App. 112-113). In addition to his statement, the victim's description of the shooting was consistent with the trajectory analysis that correlated with the location of the cartridge casings and the bullet hole on the wall that were identified at the crime scene. Furthermore, the location of the wound on Swofford's arm was consistent with the victim's description and the trajectory analysis. It is not simply that the victim identified Swofford, but the Court of Appeals failed to acknowledge that the corroborating forensic evidence supported the victim's version of events, thus strengthening his identification of Swofford.

The State presented that Swofford's DNA *was found at the scene*, and Swofford had to explain why his DNA was found on a projectile jacket (State's Exhibit 48) at the crime scene. (App. 265-271, *see* Forensic DNA Analyst, Adrian Hefney's Testimony) (emphasis added). To explain the presence of his DNA on the projectile jacket, Swofford explained that the victim had

accidentally shot him days prior and that he did not go to the hospital or report the shooting out of loyalty to the victim. (App. 582-583). Additionally, Swofford relied on alibi witnesses to explain his whereabouts on the night of the shooting. Swofford's defense was undoubtedly compromised, however, not due to the reference of "fresh blood" on the wall, but because of witnesses that raised credibility concerns and forensic evidence that corroborated the victim's version of events.

As to Swofford's witnesses, there is an understandable presumption of bias when the only corroborating testimony is from friends or family members. But here, the record shows more than the inherent presumption, but explicit testimonial evidence that there were efforts from at least one of Swofford's witnesses to conceal the truth. For example, Swofford and Lawter's neighbor (Deborah Martinez) testified that Lawter visited her in February of 2019 after she had an argument with Swofford. Over the course of their conversation, Lawter told Martinez that Swofford had been at the victim's home, and the victim was heavily intoxicated. She said when Swofford went to leave, he tried to wake the victim up, the victim was startled and shot Swofford with a gun. Swofford returned and shot the victim in self-defense. (App. 631). Martinez testified that Lawter said she did not want to testify against Swofford because he was the father of her son. Martinez stated that "[Lawter] told me that she would not come in and tell that story in court." (App. 632).

Martinez's son (Stephen Parham) was called as a defense witness and claimed to have talked to Swofford right outside of Swofford's home at 1:36AM on July 27th. He testified that Swofford went inside his house after they spoke and did not leave again. (App. 478-479). Parham confirmed that Lawter sent a text message to Parham the night before he was to testify and told him that a warrant would be issued for his arrest if he did not come to court. (App. 481). Lawter drove him to court that morning. After Lawter testified, she asked Parham if he had been speaking to the prosecution. (App. 481-82). He admitted that he told the solicitor's investigators the week

before trial that he was not "100 percent certain" that Swofford had gone into his house that night. (App. 482). Further yet, Parham testified that Swofford had instructed him to say he saw Swofford walk into his house at a certain time. Parham agreed that he had started to feel as if Swofford had been trying to manipulate him in order to get him to say certain things. (App. 487).

As to Swofford's testimony, his version of events is unsupported, and his explanations are not convincing. Swofford testified that the victim had accidentally shot him days prior to the incident. He testified that the victim unintentionally shot him in the arm, he then ran outside and proceeded to rinse his arm with a garden hose. (App. 540). He then realized that the bullet had exited his arm. (App. 540). He testified that the victim was concerned about him going to the hospital because he was a convicted felon and was not supposed to have a firearm. (App. 541). Swofford decided not to go to the hospital despite the severity of the wound and the fact that he had a severely weakened immune system due to his AIDS diagnosis and went home and bandaged his arm on his own. (App. 542).

Considering Swofford's version of events, it does not follow that a cartridge casing from days prior would be discovered at the scene (and in the very place victim described) in light of Swofford's assertion that the victim did not want him to disclose that he had accidentally shot him. Either the cartridge would have been disposed of in an effort to protect the victim or another cartridge with additional DNA would have been discovered. No evidence of additional DNA from another individual was presented.

The Court of Appeals found that Swofford was prejudiced by the failure to object because it "*significantly* undermined [Swofford's] defense," and that the prejudicial effect of the failure to object was *heightened* by the impeachment of the defense witnesses. *Swofford,* at 7. (emphasis added). If there was no biological evidence presented and no admission by Swofford that his DNA

was at the scene, perhaps so, but here, there were both. *Strickland* expressly states that it is not enough for the defendant to identify a "conceivable effect on the outcome of the proceeding" and that "not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." *Strickland* at 693. This case could only be marginally impacted, if at all. Again, using the argument that the blood was *not* fresh because it was not dripping was used in support of the defense. (emphasis added).

Even if trial counsel had challenged the characterization of the blood evidence, it does not change that the defense's witnesses were impeached, and credibility concerns were successfully raised to the jury. The limit in credibility was separate and apart from any forensic evidence. Swofford's defense was undermined apart from the issue of whether the blood on the wall was "fresh," and it was not contested that Swofford's DNA was found at the crime scene. Trial counsel's lack of objection to the solicitor's reference to the blood stain on the wall did not affect Swofford's alibi nor did it denigrate the remaining evidence, including DNA evidence. Thus, this evidence considered together with the victim's testimony shows no reasonable probability of a different result, just as the PCR court concluded. The Court of Appeals' failed to follow *Strickland's* established test.

CONCLUSION

Based on the foregoing reasons, the State respectfully requests this Court to reverse the Court of Appeals' opinion and affirm the PCR court's denial of relief.

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