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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

RODNEY R. GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000277

PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUE PRESENTED

Whether the PCR court erred by refusing to find trial counsel ineffective for failing to investigate the ballistics evidence in petitioner's case because trial counsel failed to articulate a strategy underlying his decision not to hire a firearms expert and where his deficient performance prejudiced petitioner?

STATEMENT

In July of 2014, the Sumter County grand jury indicted petitioner for murder, attempted murder, possession of a weapon during commission of a violent crime, and possession of a stolen handgun. App. 1103-04. On November 9, 2015, petitioner proceeded to a trial before the Honorable George C. James and a jury. App. 1. Charlie Johnson represented petitioner and Ernest A. Finney, III, prosecuted the case for the state. App. 1. The jury returned verdicts of guilty as charged. App. 835, ll. 7-19. Judge, now Justice James imposed a life without possibility of parole sentence as to the murder charge. App. 862, ll. 9-12. Justice James imposed concurrent sentences of thirty years as to attempted murder, five years as to the weapons charge, and time-served as to the possession of a stolen weapon. App. 862, ll. 13-17. Petitioner filed a timely notice of appeal, and his convictions and sentences were ultimately affirmed. App. 961-63. On November 28, 2018, the South Carolina Supreme Court denied petitioner's writ of certiorari. App. 964.

On May 20, 2019, petitioner filed an application for post-conviction relief (PCR). App. 966-73. Then, on June 6, 2019, petitioner filed a *pro se* motion to amend his PCR application. App. 974-75. On August 26, 2019, the state filed a return, motion for more definite statement, and partial motion to dismiss. App. 976-85. On November 15, 2021, counsel for petitioner, Willie H. Brunson, filed a return to the state's motion for more definite statement, and raised, as relevant, trial counsel's failure to investigate the ballistics from the night in question. App. 993-94. On June 15, 2023, an evidentiary hearing was held before the Honorable R. Kirk Griffin. App. 995-1064. Willie H. Brunson represented petitioner, and Zachary W. Jones represented the State. App. 995. On March 20, 2024, Judge Griffin signed an order denying PCR and dismissing petitioner's application with prejudice. App. 1084-98. On April 16, 2024, Brunson

filed a notice of appeal. App. 1099-1100. On February 18, 2025, petitioner filed a *pro se* letter with the Court which was construed as a notice of appeal. App. 1105-06. On March 11, 2025, Brunson moved to file a notice of appeal out-of-time noting that the April 16, 2024, notice of appeal was not filed with the court and the failure to file was due to miscommunication. App. 1107-1108. On March 14, 2025, this Court granted the motion to file the notice of appeal out-of-time. App. 1109.

This petition follows.

ARGUMENT

The PCR court erred by refusing to find trial counsel ineffective for failing to investigate the ballistics evidence in petitioner's case because trial counsel failed to articulate a strategy underlying his decision not to hire a firearms expert and where his deficient performance prejudiced petitioner.

Relevant facts

Trial

On March 16, 2014, officers responded to a shooting at Club Miami, in Sumter County. App. 244, ll. 1-3. Witnesses provided varying accounts of the events that led to the shooting which resulted in Tyrese Archie's death and Ray'Quann Jenkins sustaining injuries. Lavitra Harvin, whom petitioner had a romantic relationship with, testified that after a fight broke out inside the club, she went outside where she heard gunshots. App. 140, ll. 12-25; 142, ll. 9-12. She testified that Ray'Quann Jenkins ran past her and said he was shot. App. 142, l. 17 – 141, l. 10. She also saw petitioner running, who was wearing all white because they had attended an "All White" party earlier in the day. App. 136, ll. 22-24; 146, ll. 2-25. During trial, Harvin testified that she did not see petitioner fire a gun, however, she provided a statement to law enforcement that she saw petitioner with a handgun firing it during the night of the incident. App. 147, ll. 23-25; 156, ll. 8-15; 158, ll. 20-25. Harvin explained however that police threatened that her kids would be taken so she added that she saw petitioner firing a gun to her statement. App. 168, ll. 3-13.

Ray'Quann Jenkins and his friend, Tyrese Archie,[1] were at Club Miami on March 16, 2014, as well. App. 186, ll. 2-9. After having a few drinks, Jenkins and Archie planned to leave.

[1] Tyrese Archie's nickname was "Stymie." App. 189, ll. 11-16.

App. 194, ll. 8-15. On the way out of the club, they ran into some of Archie's cousins who were fighting in the parking lot. App. 196, ll. 13-22. Jenkins claimed the fight broke up, and he and Archie waited for their ride. App. 200, ll. 1-7. Three unknown men approached Archie. App. 201, ll. 2-13. The men "tried to jump" Archie, but Jenkins intervened. App. 201, ll. 14-25. Despite Jenkins' efforts, Archie and one of the men started fist-fighting. App. 202, ll. 5-15. While Archie and the man were on the ground fighting, Jenkins saw four or five other men approaching. App. 203, ll. 1-4. Jenkins claimed he also saw petitioner "coming in between and saying, watch out." App. 204, ll. 3-6. He further claimed petitioner reached "in his shirt to pull out a weapon." App. 205, l. 25 – 206, l. 1. Jenkins described being shot. App. 206, l. 2 – 211, l. 23. He did not see Archie get shot. App. 211, ll. 24-25. Jenkins gave a statement to police but did not identify petitioner as the shooter until a week before trial. App. 233, l. 8 – 235, l. 21; *see also* App. 703, ll. 21-22 (Investigator Hawkins testifying that Jenkins did not know who the man dressed in all white was when he gave his statement).

Several witnesses testified that they saw a man dressed in all white who was shooting. App. 216, ll. 9-14; 240, ll. 11-13; 278, ll. 12-14; 280, ll. 13-17; 389, ll. 1-2; 417, ll. 21-22; 590, ll. 20-23; 703, ll. 15-16. Two witnesses, Demetrice "Diamond" Brooks and Auntachie Blanding testified that an individual named "Carter Man," fired two pistols and blocked their exit. App. 282, ll. 4-25; 283, ll. 2-11; 284, ll. 2-25; 293, ll. 12-19; 324, ll. 19-24; 327, ll. 4-14; 329, l. 18 – 330, l. 18; 331, ll. 6-21. Brooks described that "Carter Man" fired a weapon. App. 284, ll. 19-21. He shot at the car she was in. App. 293, ll. 9-19. She testified that she could not "tell you where the bullet went." App. 294, ll. 9-10. She confirmed that "Carter Man," was shooting so there were two people shooting. App. 307, ll. 2-11.

The state also presented testimony from security officers and law enforcement present on March 16, 2014. Myron Conyers testified that there was a fight inside the club around 2:15 a.m., and bouncers brought the individuals outside. App. 382, ll. 16-25. While he was separating an individual from the crowd, he saw another subject appear from the fence line and fire a shot, pause, and fire two more shots. App. 383, ll. 1-7. Another security officer, Patrick Washington, heard one of the fighters say he was going to retrieve a gun and then walk toward a truck. App. 417, ll. 12-14. Washington followed the fighter to his truck. App. 417, l. 14. Washington was still dealing with the fighter when he heard between four and six shots ring out. App. 417, ll. 19-21; App. 430, l. 15 – 431, l. 6. Washington claimed he saw someone dressed in all white shooting. App. 417, ll. 21-22. Conyers and Washington chased the person. R. 383, ll. 9-12; 417, ll. 23-25. As Washington continued to chase the individual, Conyers used his flashlight to signal their location to a police officer driving nearby. App. 383, ll. 13-19. Washington and the officer later caught up with the person. App. 383, ll. 23-25. Washington claimed the person appeared to throw something shortly before Washington tackled him. App. 418, ll. 13 – 20. He also testified that he saw the gun in petitioner's hand which appeared to be a 45 handgun. App. 421, ll. 2-9. Washington testified that he carried a handgun, which was not the same kind of gun that petitioner had. App. 421, ll. 10-13. He carried a 38, which was a bigger revolver. App. 421, ll. 14-17.

The police chased petitioner across a field adjacent to the club and arrested him. App. 244, l. 19 – 245, l. 18. The police found a handgun approximately twenty feet away from where petitioner was arrested. App. 262, ll. 7-13; 264, ll. 8-10; 453, ll. 11-17. Upon his arrest, petitioner was interrogated by the police. App. 669, ll. 19-21. Petitioner admitted being at Club Miami, but denied shooting anyone. App. 674, ll. 1-10. He heard people fighting and heard

gunshots but denied taking part in those activities. App. 674, ll. 1-10. He explained he was running because he heard gunshots. App. 674, ll. 1-10.

Ballistics evidence

The police found three cartridge casings[2] at the scene, which were compared with test fires from the recovered gun. App. 516, ll. 14-18. Michele Eichenmiller, a firearms examiner, received the gun found by Lee from the Sumter County Sheriff's Department. App. 509, ll. 2-6. The gun she examined was a "Smith & Wesson, Model mmp, 45, N45 auto caliber." App. 511, ll. 1-2. There were six unfired cartridges in the magazine. Ap. 511, ll. 21-22. She described the firearm as a heavy caliber weapon and opined that if the ammunition received hit soft tissue it would keep going until it hit something harder. App. 514, ll. 22-25. Eichenmiller also received three fired shell casings from Sumter County. App. 515, ll. 2-6. She identified State's Exhibit #34 as containing the three cartridge casings that she examined. App. 515, ll. 6-12. According to Eichenmiller, the three fired shell casings were consistent in construction with the cartridge cases submitted with the firearm. App. 515, ll. 17-19. After examining the fired cartridge casings and the test round she fired from the firearm, Eichenmiller opined the fired cartridge cases were fired by that firearm. App. 516, ll. 19-22. She also testified that each time the weapon fired a bullet, a cartridge casing was ejected. App. 518, ll. 7-10.

Pathologist's testimony

The pathologist found no bullets or metal fragments in the body of Archie. App. 624, ll. 1-3. She located an entry and exit wound, however. App. 624, ll. 4-6. The bullet entered

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[2] Petitioner challenged whether the state proved the cartridge casings tested by SLED were the cartridge casings found at the crime scene in light of the state's failure to call as a witness the officer who allegedly collected the cartridge cases in order to establish a chain of custody in his direct appeal. *See* App. 866-907. The Court of Appeals ultimately affirmed as to the chain of custody issue. App. 961-63.

through the left upper chest and went through the left lung, causing hemorrhaging. App. 624, ll. 10-19. The exit wound was in the left back. App. 624, ll. 20-22. She estimated the wound was likely caused by a medium caliber bullet, "which could be 38 or a 357." App. 625, l. 20 – 626, l. 1. She explained that a 38 was a medium caliber. App. 626, ll. 2-5; 627, ll. 18-19. She distinguished those calibers from a 45 caliber round, which she considered large. App. 627, ll. 20-24. On cross-examination, she testified that the .45 casings did not appear to be what caused the death of the decedent but explained that "skin is elastic so it can shrink a little bit." App. 628, ll. 7-19. She testified that her medical opinion was that the .45 round would not be the type of round used in this case. App. 628, l. 23 – 629, l.1. On re-direct examination, she testified that while she could not say 100 percent that the .45 caliber bullet did not cause the death, she opined that the wound was "more consistent with a smaller caliber." App. 629, ll. 15-20.

Closing arguments

During the state's closing argument, it asserted that the pathologist's testimony "doesn't bring about enough reasonable doubt in my mind that you have to let this case go." App. 773, ll. 14-16. The state continued that the jury needed "to make this decision based on all the evidence, not just one little piece." App. 773, ll. 20-22. The state argued that the law required reasonable doubt not just trial counsel saying, "there's a little doubt . . . because the doctor thinks it was a medium bullet and not a large bullet." App. 773, l. 22 – 774, l. 2. The state maintained that was "not reasonable doubt to cut loose a case." App. 774, ll. 2-3.

Evidentiary hearing

During petitioner's evidentiary hearing, he testified that trial counsel never interviewed a weapons expert. App. 1018, ll. 4-5. Likewise, trial counsel never interviewed or hired anyone that was an expert in ballistics. App. 1018, ll. 6-8. He agreed that an expert in ballistics or

weapons would have been able to determine whether a .38 caliber bullet could come out of a .45 firearm. App. 1018, ll. 9-13. Petitioner did not believe that a .45 firearm could shoot a .38 bullet. App. 1018, ll. 14-16. He reiterated that an expert would have been able to testify concerning what a .45 firearm may expel, but trial counsel did not hire an expert to tell the jury about whether a .38 caliber bullet could be expelled from a .45 firearm. App. 1018, ll. 17-22. He testified that his allegations were critical aspects of his case that trial counsel did not explore, amounting to deficient performance that severely prejudiced him. App. 1021, ll. 5-21. Petitioner agreed that without trial counsel's critical errors there was a great probability that the result of the proceeding would have been different. App. 1021, ll. 22-25.

Petitioner called Gary A. Chapin, an expert in firearms, to testify at his evidentiary hearing. App. 1024, ll. 14-22; 1032, l. 19 – 1033, l. 5. Chapin explained the difference between a revolver and an automatic handgun. App. 1030, ll. 11-21. He testified that for a revolver, until the firearm is unloaded, the shell casing stays contained within the cylinder. App. 1030, ll. 22-25. A revolver would require manual ejection. App. 1031, ll. 1-3. He explained that a casing fired from a .38 would be from a single or double action revolver which would require either pressing a cylinder release button for a double action or opening the loading fate to unload each round individually for the single action. App. 1031, ll. 6-15. For a semiautomatic weapon, he explained that once the shell casing makes contact with the ejector, it is ejected out of the chamber. App. 1031, ll. 18-23. He continued that a revolver casing remains in the firearm after it is fired, while a semiautomatic weapon ejects the casing. App. 1031, ll. 23-25. Chapin then testified that he had experience shooting both a .38 revolver and a .45 caliber pistol. App. 1038, ll. 1-7. He testified that a "45 shoots .45." App. 1032, ll. 16-17. He explained that a .38 diameter bullet could be fired from multiple weapons. App. 1033, ll. 16-24. PCR counsel

showed Chapin the property and evidence voucher submitted for this case, marked Petitioner's Exhibit 3, which listed three .45 caliber fired bullet cartridges and a Smith & Wesson .45 caliber firearm. App. 1034, ll.1-14. Looking at Petitioner's Exhibit 4, a photograph of a semi-auto firearm, Chapin testified that the photographed firearm appeared consistent with the firearm police collected as evidence on the night of the incident. App. 1034, ll. 15-24.

Chapin then testified that the .45 firearm in the photograph was not capable of firing a .38 bullet. App. 1035, ll. 7-9. He testified that if a .38 weapon were fired on the night of the incident "it would stay contained within the firearm." App. 1035, ll. 10-15. He explained that a .38 caliber projectile striking an object would leave a .38 hole whereas a .45 caliber projectile striking an object would leave a .45 hole. App. 1036, ll. 9-14. PCR counsel showed Chapin the autopsy report, marked as Petitioner's 2, and asked Chapin to read the final paragraph. App. 1037, ll. 2-17. He read from the autopsy report that the pathologist measured the entrance wound as .3 by .38 inches in diameter and the exit would as .38 inches in diameter. App. 1037, 7-17. He testified that, in his expert opinion, a .38 Special, 357, or 9-millimeter would leave .38 bullet holes. App. 1038, ll. 5-8. On cross-examination, Chapin agreed that the size hole a projectile left would shrink if the material it passed through was elastic enough. App. 1039, l. 16 – 46, l.1.

Next, trial counsel testified and explained that he was limited in funds for petitioner's case. App. 1048, ll. 23-25. He testified that he did not have any funds to hire any additional experts or anyone in the case. App. 1048, l. 25 – 55, l. 1. He agreed that at the time of trial he did not know the caliber of projectile that was responsible for the death. App. 1050, ll. 9-12; 1051, ll. 3-5. He testified that had he been aware of that information he would have used that evidence to defend his client and could have argued that the murder weapon was a .38 rather than

a .45. App. 1051, ll. 3-10. He agreed that an expert witness would have been given great weight. App. 1053, ll. 4-8. He agreed that testimony from an expert witness that petitioner had a .45 but the deceased was killed by a .38 would be sufficient evidence to indicate some doubt in the jury. App. 1053, ll. 9-15. He continued that was his intent by trying to prove that other people were shooting during the incident. App. 1053, ll. 15-17. He reiterated that his investigator was efficient but that they did not have the information that a .38 killed the deceased. App. 1053, l. 18 – 60, l. 1. He testified that without the information as to the size of the bullet, the projectile that was not recovered from the dashboard, and without financial means he could not have hired an expert. App. 1055, l. 23 – 62, l. 1.

At the conclusion of the evidentiary hearing, PCR counsel argued that trial counsel "failed from the investigating ballistics in hiring an expert." App. 1059, ll. 3-4. He contended that funds being low does not allow trial counsel to fail to do his due diligence. App. 1059, ll. 7-8. He asserted that trial counsel's failure to explore critical aspects of the case "so undermined the proper functioning of the adversarial process, that it cannot be relied upon to produce a just result and it did not produce a just result." App. 1059, l. 23 – 1060, l. 3. He concluded that trial counsel's deficient performance severely prejudiced petitioner. App. 1060, ll. 6-7.

The PCR court's ruling

The PCR court determined that trial counsel "appropriately elicited from the State's forensic pathologist that the gunshot wounds on Archie's body were more consistent with a .38 caliber projectile than a .45 caliber projectile." App. 1095. The PCR court continued that Chapin's testimony acknowledged that a bullet passing through an elastic medium could leave a hole smaller than the diameter of the bullet and stated that "Chapin's testimony on this point was entirely cumulative to the testimony of Dr. Ross, which Counsel reasonably elicited and

exploited on cross-examination and in his closing argument." App. 1095. The PCR court determined that petitioner's contention that "Carter Man" could have been implicated as the killer through Chapin's testimony was meritless because it was speculation and the only trial witness who saw "Carter Man" fire a weapon was adamant that petitioner killed the deceased. App. 1095-96. The court further found that trial counsel credibly testified his investigation into "Carter Man," and concluded that there was "substantial direct evidence from multiple witnesses that [petitioner] fired numerous shots in the direction of Archie." App. 1096. Accordingly, the PCR court determined that petitioner failed to meet his burden of proving that trial counsel's failure to investigate the ballistic evidence was ineffective. App. 1096. The court continued that "none of the ballistic evidence pointed out by [petitioner] at the evidentiary hearing was sufficient to create a reasonable probability of a different result." App. 1096. The court thus denied the allegation and dismissed with prejudice. App. 1096.

Discussion

The PCR court erred by refusing to find trial counsel ineffective for failing to properly investigate the ballistics evidence in petitioner's case because trial counsel failed to articulate a valid trial strategy, his performance fell below reasonable professional norms, and petitioner was prejudiced by trial counsel's deficient performance.

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 687-88. 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." *Thompson 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)).

Under the deficiency prong, "the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." *Strickland*, 466 U.S. at 688. In *Hinton v. Alabama*, 571 U.S. 263, 274, 134 S. Ct. 1081, 1088-89 (2014), the United States Supreme Court explained that a "trial attorney's failure to request additional funding in order to replace an expert he knew to be inadequate because he mistakenly believed that he had received all he could get under Alabama law constituted deficient performance." *Id.* There, the Supreme Court concluded that counsel's performance was deficient where trial counsel's failure to seek additional funds for an expert witness "was based not on any strategic choice but on a mistaken belief that available funding was capped." *Id.* at 273. Moreover, "[c]ounsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "Where counsel articulates a strategy, it is measured under an objective standard of reasonableness." *Id.* (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

Trial counsel's failure to investigate the ballistics evidence in petitioner's case and resulting decision not to hire an expert witness, constituted deficient performance. First, trial counsel failed to articulate a reason for failing to hire a firearms expert that was objectively reasonable. *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402. Instead, he merely testified at the

evidentiary hearing that he did not have the funds to hire additional experts. App. 1048, l. 25 – 1049, l. 1. In addition, trial counsel's testimony that without the information as to the size of the bullet, the projectile that was not recovered from the dashboard, and without financial means he could not have hired an expert, demonstrates that the choice to not hire an expert was not made after a thorough investigation and cannot represent a valid reason for implementing a particular strategy. App. 1055, l. 23 – 1056, l. 1; *see Wiggins v. Smith*, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535-36 (2003) (quoting *Strickland*, 466 U.S. at 690-91) ("Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation."). Although the PCR court determined that trial counsel "appropriately" elicited information from the state's pathologist concerning the size of the gunshot wound, the PCR court ignores that trial counsel did not articulate a valid reason underlying his decision not to conduct an independent investigation concerning the ballistics or hire an expert in firearms. App. 1095. Therefore, by failing to reasonably investigate the ballistics in petitioner's case and failing to hire an expert witness who could opine about characteristics of .38 and .45 projectiles and firearms, trial counsel's performance fell below reasonable professional norms. *Strickland*, 466 U.S. at 687-88.

Petitioner was also prejudiced by trial counsel's deficient performance. During petitioner's evidentiary hearing, Chapin provided valuable testimony that the .45 firearm recovered was not capable of firing a .38 bullet, that a .38 firearm would retain a bullet if fired, and provided the types of firearms that could expel .38 bullets which did not include the type of weapon that was associated with petitioner during his trial. App. 1035, ll. 10-15; 1036, ll. 9-14;

1038, ll. 5-8. There is a reasonable probability that, had trial counsel procured an expert and presented testimony like Chapin's during petitioner's trial, the outcome of petitioner's proceeding would have been different. *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625.

For instance, during trial, petitioner was connected to a .45 caliber weapon and the state presented evidence that three spent shell casings recovered from the scene were consistent with the recovered weapon. App. 509, ll. 2-6; 511, ll. 1-2; 515, ll. 17-19. The state's pathologist opined however that it was her medical opinion that the gunshot wound that Archie sustained was more consistent with a smaller caliber. App. 629, ll. 15-20. While the PCR court was correct that trial counsel was able to elicit "from the State's forensic pathologist that the gunshot wounds on Archie's body were more consistent with a .38 caliber projectile than a .45 caliber projectile," Chapin's expert testimony strengthened petitioner's defense that he was not the only shooter on the night of the incident by providing that a .38 weapon would not expel a projectile. App. 1095; App. 1030, ll. 22-25; 1031, ll. 1-3; 1035, ll. 10-15. That testimony would have offered an explanation as to why "metal bullets," or "fragments" were not recovered from the decedent's body which is consistent with Dr. Ross's testimony that the gunshot wound was consistent with a smaller caliber like a .38. *See* App. 624, ll. 1-3.

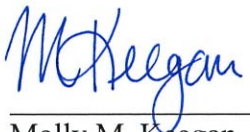
In addition, although Chapin testified similarly to the state's pathologist that a bullet passing through an elastic medium, like skin, could leave a smaller hole, his testimony provided additional insight into the difference between a .38 and a .45 and their respective functions. *See* App. 1095; App. 1039, l. 16 – 46, l.1; App. 626, ll. 7-19. In fact, the state argued in closing that the pathologist's testimony alone was "not reasonable doubt to cut loose a case." App. 774, ll. 2-3. That is precisely why the testimony of a firearms expert was necessary, and, without that critical testimony at petitioner's trial, any confidence in the outcome of the trial is undermined.

Thompson, 423 S.C. at 245, 814 S.E.2d at 492; *Rutland,* 415 S.C. at 577, 785 S.E.2d at 353. The PCR court thus erred by finding that none of the ballistic evidence pointed out by [petitioner] at the evidentiary hearing was sufficient to create a reasonable probability of a different result," given that petitioner presented evidence of the expert testimony that could have been presented at his trial had his trial counsel reasonably investigated the ballistics in his case. App. 1096; *but see Vandross v. Stirling*, 986 F.3d 442, 449 (4th Cir. 2021) (citing *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) ("Prejudice from trial counsel's failure to call witnesses cannot be shown where the witnesses do not testify at post-conviction relief."). Even further, petitioner demonstrated that he suffered prejudice as a result of trial counsel's deficient performance because the expert testimony may have created critical reasonable doubt that a .45 bullet did not kill the decedent. App. 1096.

Therefore, the PCR court erred by refusing to find trial counsel ineffective because he failed to articulate a valid reason for failing to investigate the ballistics or hire a firearms expert, and, but for his deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88; App. 1095-96.

CONCLUSION

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



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of February, 2026.