

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
The Honorable Perry H. Gravely, PCR Judge

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Apr 28 2026

S.C. SUPREME COURT

RONNIE C. SWOFFORD,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

Appellate Case No: 2025-002073

**APPENDIX
VOLUME 3 OF 3**

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

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

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

APPENDIX

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Jul 11 2022

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
County of GREENVILLE

Ronnie C. Swafford, Jr.
#218281
Applicant

v.

STATE OF SOUTH CAROLINA
Respondent

in THE COURT OF Common
Pleas

CASE No. 2018-CP-23-05662

MOTION TO AMEND Applicants
Post-Conviction Relief Application

13 DEC 27 PM 1:45
Paul Wickensmeyer CJC BVL SC

Comes now THE Applicant by motion to this Honorable Court to Amend Applicants Post-Conviction Relief Application Case No. 2018-CP-23-05662 to Correct And/or Add language and facts to properly support the Allegations. Applicant is Amending question 11(A) of the PCR Application to Read the additional information.

11.(A)(1) PCR Counsel Mr. Ariail failed to timely serve the Notice of Appeal from the PCR Courts ORDER on the STATE AS well AS the S.C Supreme Court provided by Rules 243(b) and 203(b)(A), SCACR. In addition to failing to timely file and serve the Applicants motion for a 59(e).

FACTS

The Applicant did not Receive An Order of Dismissal of the Post-conviction Relief Case No. 2014CP2303763 until Feb 2016. The Applicant Repeatedly Asked Mr. Ariail to Submit the Exhibits from the PCR Hearing, the Applicant wrote Mr. Ariail on Thursday January 21, 2016

(mailed from McCormick C.I. on Friday, January 22, 2016)
 At that time I did not know when or if the
 Honorable Judge Gravelly ruled for me or against me.
 However, Mr. Ariail is a Professional Attorney that
 was appointed to me, and not only did I not
 know of the 10 days to file the motion 54(a)
 I had no authority to file the motion. Since I
 had not heard anything I respectfully tried to
 contact Mr. Ariail's office once a month and after
 I suffered a bicep tear, and was soon to have
 surgery I wrote Mr. Ariail and again please
 make sure everything is preserved for Appellate Review.
 Mr. Ariail had no intention of filing the 54(e) motion
 which is evident by the time I mailed out my letter
 on Friday, January 22, 2016 which is now known to
 be the last day to file the motion. Mr. Ariail simply
 could have responded to my letter and explained the
 10 days for filing the motion is expired and therefore
 he could have timely filed the Appeal and serve the
 S.C. Supreme Court and the State. Mr. Ariail failed
 to follow the S.C. Rules of Court and any law that supports
 timely filing which is a serious deficiency in, The Applicant
 was prejudiced because after almost 3 years of awaiting a
 decision the Honorable Court of Appeals dismissed everything for
 lack of Jurisdiction.

The Applicant praysfully request a Consent Order
 Signed by the Honorable Court to allow the Applicant
 A belated Austin Review to the first PCR.

The STATE WANTS TO APPOINT Counsel And ~~1003~~
A transcript the ATTORNEY General's office already has.
There is nothing in the transcript that determines if
or when an Appeal will be filed. This would be a
WASTE OF TIME AND TAX payers money. MR. Ariail
has conceded he was AT fault, and the Consent
ORDER would expedite this entire process

Conclusion

The Applicant Respectfully Requests this
Honorable Court in the Interest of JUSTICE And
per the S.C. And U.S. Constitution to please grant
the Applicant A belated Appeal and/or belated Austin
Review to my first PCR, thank you.

Dec. 21, 2018
DATE

Ronnie C. Swafford Jr.
Ronnie C. Swafford, Jr.

CC: Megan Harrigan Jameson, SADAG
R. Mills Ariail, Jr. ATTORNEY

1004

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Ronnie C. Swafford Jr. #218281
Applicant

V.

STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF COMMON
PLEAS

PROOF OF SERVICE

CASE NO. 2018-CP-23-05662

13 DEC 27 PM 1:45
Paul Wickensimer COC BUL SC

I, the Applicant certify that I have placed the motion to Amend Applicant's Post-Conviction Relief Application in U.S. mail postage prepaid addressed to ATTN: PAUL WICKENSIMER, Clerk of Court, Greenville County 305 EAST NORTH STREET, Greenville SC 29601 on the 21st day of December 2018. And a copy of the said motion placed in the U.S. mail postage prepaid addressed to ATTN: MEGAN HARRIGAN JAMESON, SADA B - S.C. Attorney General's office P.O. Box 11549, Columbia, S.C. 29211

Dec. 21, 2018
DATE

Ronnie C. Swafford Jr.
Ronnie C. Swafford Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Ronnie C. Swofford, Jr., #218281,	)	Case No.: 2018-CP-23-05662
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its return to the application for post-conviction relief filed by Ronnie C. Swofford, Jr., (Applicant) on November 6, 2018, would respectfully show this Court:

I. Procedural History

Ronnie C. Swofford, Jr., (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its November of 2009 term, the Greenville County Grand Jury indicted Applicant for first-degree burglary (2009-GS-23-09403), assault and battery with the intent to kill (2009-GS-23-09404), possession of a weapon during the commission of a violent crime (2009-GS-23-09404), and possession of a pistol by a person convicted of a violent crime (2009-GS-23-09405). During its September of 2011 term, the Greenville County Grand Jury indicted Applicant for assault with intent to kill (2011-GS-23-07263). Applicant was represented by Assistant Public Defenders Andrew J. Johnston and Gerald G. Wilson, and Assistant Solicitor Kristie Bjorndal Hodge of the Thirteenth Circuit Solicitor's Office prosecuted the case. On May 14-17, 2012, Applicant proceeded to a jury trial with the Honorable Edward W. Miller, (trial court) presiding. At the conclusion of trial, the jury convicted Applicant as indicted. The trial court sentenced Applicant to concurrent terms of imprisonment for life without the possibility of parole for first-

degree burglary, life without the possibility of parole for assault and battery with the intent to kill, five years for possession of a pistol by a person convicted of a violent crime, and ten years for assault with intent to kill. The trial court did not sentence Applicant for possession of a weapon during the commission of a violent crime because he had already sentenced him to life with the possibility of parole.

Trial counsel filed a timely notice of appeal. The Court of Appeals dismissed Applicant's direct appeal at his request on June 28, 2013, after he unsuccessfully moved to relieve Appellate Defender LaNelle C. DuRant of the Division of Appellate Defense – South Carolina Commission on Indigent Defense. The Remittitur was issued on July 24, 2013. Applicant filed a pro se motion for a new trial based on after-discovered evidence on July 23, 2013. His motion was denied by the Honorable Letitia H. Verdin on December 9, 2013. Judge Verdin also denied Applicant's motion to reconsider on December 31, 2013. Applicant filed a notice of appeal. The Court of Appeals dismissed that appeal on June 23, 2014, at Applicant's request. The Remittitur was issued on July 9, 2014.

On July 8, 2014, Applicant filed an application for post-conviction relief (2014-CP-23-3763). Respondent made its return on January 13, 2015, requesting that an evidentiary hearing be held in order to address Applicant's allegations. On October 21, 2015, an evidentiary hearing was convened at the Greenville County Courthouse before the Honorable Perry H. Gravely (PCR court). R. Mills Ariail, Jr., Esquire, was present on Applicant's behalf, and Assistant Attorney General Karen Ratigan represented Respondent. The PCR court denied Applicant's application on December 30, 2015. The South Carolina Court of Appeals dismissed Applicant's appeal from the PCR court's order, finding that Applicant's PCR counsel did not timely serve the notice of appeal from the PCR court's denial of relief when he filed a motion for reconsideration outside

of the required ten-day window, which then did not toll the thirty-day window for filing a notice of appeal. Swofford v. State, S.C. Ct. App. Order filed September 27, 2018. This successive application for post-conviction relief followed.

II. Current Application

Applicant filed his present Application for Post-Conviction Relief on November 6, 2018. Applicant alleges he is being held in custody unlawfully due to the ineffective assistance of PCR counsel in his first PCR action. Applicant alleges PCR counsel was constitutionally ineffective for failing to timely file a motion pursuant to Rule 59, SCRPC, and failing to timely file a notice of appeal. Applicant requests relief in the form of an appeal of the denial of his first application for post-conviction relief.

Attached to this return, and incorporated herein by reference are the records of the Greenville County Clerk of Court, the transcript from Applicant's trial, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's first PCR action, including the transcript of the hearing, the records from the Applicant's appeals, and the present application for post-conviction relief. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Motion to Strike

Applicant filed his application for post-conviction relief on November 6, 2018. Susannah C. Ross, Esquire, was appointed as Applicant's PCR counsel on December 12, 2018, in accordance with Rule 71.1(d), SCRPC. On December 27, 2018, Applicant filed a pro se amended application for post-conviction relief.

"Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed pro se by a

person represented by counsel are not to be accepted unless submitted by counsel.” Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); see also State v. Stuckey, 333 S.C. 56, 58, 508 S.E.2d 564 (S.C. Sup. Ct. Order filed November 5, 1998) (ordering that a substantive document filed pro se by an appellate represented by counsel be stricken); State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct.App. 2016) (pro se filing a nullity where person was represented by counsel). Where an Applicant seeks to submit a filing through his or her attorney, counsel has an obligation to use professional judgment and review arguments offered by his or her client. Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517 (2002). “[C]ounsel may not serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation” Id.

Applicant’s pro se amended application lacks any indicia of PCR counsel’s assistant. It does not present any markings or signatures indicating it was prepared by counsel or under her guidance. Respondent moves for the Court to strike the filing, give it no consideration, and treat it as a nullity.

IV. Ineffective Assistance of PCR Counsel

Respondent interprets the allegations from Applicant’s Application as a claim of the ineffective assistance of PCR counsel. Successive applications such as the one before this Court are disfavored. S.C. Code Ann. § 17-27-90. Here, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application when PCR counsel failed to timely file a motion to reconsider and a notice of appeal. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, (1991). Therefore, “the contention that prior PCR counsel was ineffective is not per se a ‘sufficient reason’ warranting a successive PCR application under [S.C.

Code Ann.]§ 17-27-90.” Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But Austin “is limited to its particular factual situation.” Aice, 305 S.C. at 452, 409 S.E.2d at 394.¹ Pursuant to Austin, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application “on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” Austin, 305 S.C. at 454, 409 S.E.2d at 396. “If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding.” Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court of South Carolina for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal. In light of Austin, Respondent requests an evidentiary hearing on the claim that PCR counsel was ineffective in failing to timely appeal the denial of Applicant’s application for post-conviction relief; however, Respondent requests that the Court summarily dismiss any claim that PCR counsel was ineffective in failing to timely file a motion pursuant to Rule 59, SCRCP, as that claim does not fall within the narrow exception to the prohibition against successive applications for post-conviction relief and against claims of the ineffective assistance of PCR counsel articulated in Austin.

¹ Aice was issued in conjunction with Austin, limiting the reach of Austin and holding “that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel.” 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

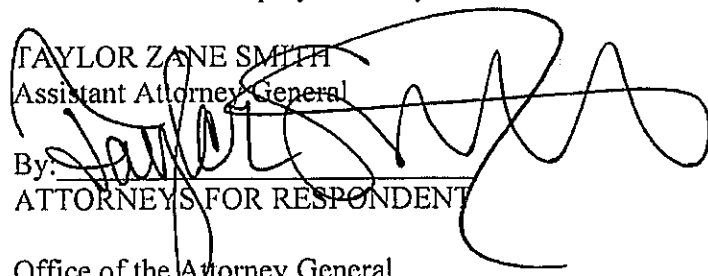
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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Columbia, South Carolina 29211
Telephone: (803) 734-3737

December 13, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2018-CP-23-05662
	)	
RONNIE C. SWOFFORD, JR., 218281	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return And Partial Motion To Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee Street
 Greenville, SC 29601

DATED this 13th day of December, 2019.


 Anne A. Mueller
 Legal Assistant For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2018-CP-23-05662
	)	
	)	
RONNIE C. SWOFFORD	)	
	)	APPLICANT
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
	)	RESPONDENT

November 8, 2021
 Greenville, South Carolina
 VIA WEBEX

B E F O R E:

THE HONORABLE G.D. MORGAN, JR., Judge.

A P P E A R A N C E S:

SUSANNAH C. ROSS, ESQ.
 Attorney for the Applicant

TAYLOR Z. SMITH, ESQ.
 Attorney for the Respondent

APRIL HERRON
 Official Court Reporter

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1 (WHEREUPON, the following proceedings were held
2 via WebEx.)

3 COURT REPORTER'S NOTE: Due to remote platform
4 interruption and video/audio interference throughout the
5 hearing, those instances are denoted with [audio
6 distortion] in the transcript.

7 THE COURT: All right, good afternoon. All
8 right, everybody ready to go?

9 All right, I will call Mr. Smith to call the
10 case and we'll go from there.

11 MR. SMITH: Your Honor, this is the case of
12 Ronnie C. Swofford, Jr., v. State, case number is
13 2018-CP-23-05662. Note for the record that we're all
14 here present today by WebEx. Mr. Swofford is serving
15 out a life sentence in the Department of Corrections.
16 He was indicted by the Greenville County Grand Jury
17 for first degree burglary, assault and battery with
18 intent to kill, possession of a weapon during the
19 commission of a violent crime. And possession of a
20 pistol by a person convicted of a violent crime back
21 in November 2009. Then in September of 2011, he was
22 also indicted for assault with intent to kill. After
23 a three day jury trial in May of 2012 with Judge
24 Miller presiding, the jury found Mr. Swofford guilty
25 as indicted. Judge Miller sentenced him to

1 concurrent terms for life in imprisonment. And then
2 some other sentences for the other offenses.

3 The Court of Appeals later dismissed
4 Mr. Swofford's appeal at Mr. Swafford's request,
5 after Mr. Swofford unsuccessfully moved to relieve
6 his appointed appellate lawyer. And then that case
7 was remitted back to the circuit court. Mr. Swofford
8 filed a pro se motion for a new trial in the circuit
9 court based on after discovered evidence. Judge
10 Verdin denied that motion in December of 2013. She
11 also denied Mr. Swofford's motion to reconsider.
12 Mr. Swofford appealed that and the Court of Appeals
13 dismissed, again, at Mr. Swofford's request. The
14 remitter was issued on July 9th, 2014.

15 So then we get to Mr. Swofford's first
16 Application for Post-Conviction Relief, which was
17 filed back in July of 2014. Judge Gravely presided
18 over a evidentiary hearing on that application in
19 October of 2015. Mr. Mills Ariaail is here today
20 representing Mr. Swofford at the hearing. Judge
21 Gravely denied the Application for Post-Conviction
22 Relief with prejudice. Mr. Ariaail filed a motion for
23 reconsideration pursuant to Rule 59 of the Rules of
24 Civil Procedure. That motion, essentially,
25 incorporated a pro se legal brief from Mr. Swofford.

1 The State opposed the motion arguing that it was
2 improper hybrid representation for the motion to
3 incorporate a pro se argument from Mr. Swofford. And
4 argued that Judge Gravely's order addressed all
5 issues raised in that application. In short order,
6 Judge Gravely denied the motion.

7 Mr. Ariail then filed a Notice of Appeal.
8 Post-conviction Relief appeals are a little unusual
9 because they begin in The South Carolina Supreme
10 Court, which can then transfer them to the Court of
11 Appeals or keep them. In Mr. Swofford's case, The
12 Supreme Court did a transfer of the case to the Court
13 of Appeals. And then The Court of Appeals dismissed
14 the appeal, finding that Mr. Ariail did not timely
15 serve the Notice of Appeal from Judge Gravely's order
16 denying relief. Because the motion for
17 reconsideration was filed outside of the ten day
18 window allowed under the rules, which did not toll
19 the 30 day timeline for Notice of Appeal. So
20 Mr. Swofford's successive application followed.

21 We are ready today, Your Honor, but I have a
22 legal matter. It is my understanding that
23 Mr. Swofford wants to make a couple of claims before
24 the Court. And I think all of them except one should
25 be dismissed as a matter of law. So I would be happy

1 to speak to that now if you'd like or?

2 THE COURT: I'll hear from you.

3 MR. SMITH: Okay. So, essentially, and I'll let
4 Ms. Ross agree if this is an accurate statement of
5 the issues, but one being that he argues that he's
6 entitled to a belated PCR appeal under a case called
7 Austin v. State; which I believe is cited in The
8 State's return. But I can also provide that case
9 citation. But what Austin says, essentially, is that
10 if you do not knowingly and voluntarily waive your
11 right to appeal both denial on the Post-Conviction
12 Relief Application, you can file a second one. And
13 if you prevail on that, you can appeal the original
14 PCR decision. And The State agrees that we need to
15 have testimony on that to determine whether he is
16 entitled to appeal that first order.

17 So part -- The State thinks it should be
18 dismissed outright is The State's argument that there
19 were things Mr. Ariail didn't argue properly the
20 first time around. That he did not preserve in a
21 proper way so that certain arguments would be before
22 the Supreme Court or Court of Appeals on appeal. And
23 The State's position is that under case Ace v. State,
24 which that citation is 305 S.C. 448, it's a 1991 case
25 from the Supreme Court. I think it's pretty much

1 squarely on point here. It says, You cannot file a
2 succussive application to argue that your first PCR
3 lawyer did not do a good job or did not do things
4 properly. And it's sort of a companion case to the
5 Austin case because it references back to Austin and
6 it says, The only time you can effectively PCR your
7 PCR lawyer, is if you were denied a right to appeal.

8 And it's The State's argument that Mr. Swofford
9 can argue that, basically, because Mr. Ariail filed
10 his notice of appeal late, that Mr. Swofford was
11 denied his right to appeal wholesale. That he cannot
12 [audio distortion] particulars of whether Mr. Ariail
13 did things right or wrong or made bad arguments in
14 the hearing. The courts do not allow that. So
15 that's The State's position, Your Honor.

16 THE COURT: All right, thank you, Mr. Smith.

17 All right, Ms. Ross, I'll hear from you.

18 MS. ROSS: Thank you, Your Honor. We'll just
19 argue we have a witness who has reviewed the
20 transcript of the PCR. And he's, basically,
21 outlining what Mr. Swofford was attempting to put in
22 the 59(e) motion. And we would argue under Ace v.
23 State, that is sufficient reason why new grounds were
24 not raised or not raised sufficiently in the prior
25 case. Here, we're just trying to get Mr. Swofford

1 his one bite at the apple with his full argument.
2 And that includes what was put in the 59(e). It was
3 not effectively reviewed because it wasn't filed on
4 time. And then the appeal wasn't filed on time. So
5 there was no review of that either. So we're just
6 trying to have that one bite at the apple. And we
7 would argue that grounds weren't sufficiently raised
8 at PCR.

9 THE COURT: All right. Let me ask you this,
10 could the grounds have been sufficiently raised at
11 the original PCR?

12 MS. ROSS: Well, they could have been raised and
13 there were. There's testimony in the PCR transcript
14 by Mr. Swofford about those grounds. And then he
15 also put them in a pro se 59(e) motion that was filed
16 belatedly; and then dismissed by The Supreme Court
17 because it wasn't filed in a timely manner. So we
18 would argue it's no fault of Mr. Swofford's that it
19 wasn't raised at the prior PCR. Because he raised
20 it, it just wasn't preserved because the 59(e) didn't
21 ensure that the order denying relief. And that's on
22 Page 7, I believe, of Judge Gravely's order. That
23 order did not address one of Mr. Swofford's main
24 issues that testimony kept coming in about fresh
25 blood evidence throughout the trial when, in fact,

1 there was no blood found.

2 THE COURT: All right.

3 MS. ROSS: Let me clarify, in this case there
4 was, I believe, there was some blood evidence but the
5 issue was was it fresh blood. Because Mr. Swofford's
6 defense relied on the argument that there was a
7 shooting a number of days prior and that's how his
8 DNA got there. And then there was testimony during
9 the trial about fresh blood on the wall, fresh blood
10 around. And that was not suppressed or objected to.
11 And that resulted in prejudice of Mr. Swofford. So
12 that's the point he wants -- I believe it was made at
13 the PCR hearing but it wasn't technically raised.

14 THE COURT: All right.

15 MR. SMITH: Your Honor?

16 THE COURT: Yes, sir.

17 MR. SMITH: I would like to quote maybe one or
18 two sentences from [audio distortion]. I believe
19 starting on Page 394. Therefore, as long as it was
20 possible to raise the argument in his first PCR
21 application, an applicant may not raise it in a
22 successive application. Clearly, the arguments
23 [audio distortion] seems to advance in the second
24 PCR, could have been raised in his first application.
25 This being so, this Court need look no further. We

1 will not engage in a inspiration of why the grounds
2 were not raised. It is sufficient that they could
3 have been raised but were not.

4 THE COURT: And The State's position is that
5 those grounds could have been raised in the prior
6 PCR?

7 MR. SMITH: Correct, Your Honor.

8 THE COURT: Ms. Ross, that's why I asked you
9 could they have been raised? And it seems to me that
10 they could have been raised in the prior PCR.

11 MS. ROSS: And he's arguing they were raised in
12 the prior PCR but because of the wording of the order
13 of dismissal, they were not -- that issue was not
14 preserved. And Mr. Swofford's arguing that effective
15 59(e) motion would have assured that that specific
16 issue was preserved. So he's saying it was brought
17 up at the prior PCR. But it was not effectively
18 preserved. And I refer back to the Ace v. State.
19 There has been to be sufficient reason why these
20 grounds were not raised or not raised sufficiently.
21 Here, we would argue that those grounds were not
22 raised sufficiently at the prior PCR. And therefore,
23 not preserved for appeal.

24 So what Mr. Swofford -- we're just asking for an
25 appeal of the PCR today. We just want to make sure

1 that the issues are effectively preserved so that
2 appeal will be thorough and valid.

3 THE COURT: All right.

4 MR. SMITH: Your Honor, the problem with that is
5 we're setting a new factual record today. If all
6 Mr. Swofford wants is an appeal, the record is set
7 from the first hearing.

8 THE COURT: Ms. Ross, it does seem like the
9 record is set in the first hearing. I know the
10 argument is it was raised by the wording of the
11 dismissal that didn't preserve the record there. I
12 mean, the issue.

13 MS. ROSS: Correct. Mr. Swofford is arguing,
14 and he talks about it on Page 21 of the PCR
15 transcript, he's arguing that there were these
16 references throughout the trial to fresh blood and
17 blood splatter on the wall, when there simply was
18 not -- that was not there. And that fact is not
19 addressed in the order of dismissal. And so
20 therefore, there's a 59(e) motion with an attached
21 pro se 59(e) that sets out those issues. And we are
22 concerned that that is not preserved on the record
23 because that wasn't filed in a timely manner. And
24 therefore, that was part of the dismissal on appeal.
25 So we want to ensure at this Austin review, that the

1 Supreme Court has that argument laid out in the 59(e)
2 motion as a part of the record. And I don't think
3 they did because it wasn't filed in a timely manner.

4 THE COURT: All right.

5 All right, anything else, Mr. Smith?

6 MR. SMITH: Just one more thing, Your Honor.

7 Another problem with this is, essentially, what would
8 happen if you deny The State's motion is, is that
9 both The State would have to address legal argument
10 from Mr. Ariail and from Mr. Swofford, independently,
11 in the same manner. And as The state pointed out in
12 the return to the original 59(e) motion, that that's
13 hybrid representation and it's not allowed. The
14 State's position is it doesn't matter if Mr. Swofford
15 personally wants issues raised, if his lawyer did not
16 raise them, then that's -- The State's not required
17 to address Mr. Swofford, specifically, while he's
18 represented.

19 THE COURT: I mean, it was raised in the return
20 about the hybrid representation. Mr. Swofford did
21 file his response, in addition to his attorney's
22 response. That seems -- which, obviously, cannot be
23 done. And that cannot be considered, according to
24 The State's argument; correct?

25 MR. SMITH: That's correct, Your Honor. And

1 if -- to say Your Honor were to grant the original
2 Austin relief of Mr. Swofford today, just saying not
3 that we can pick at what Mr. Ariail did, but just
4 that Mr. Swofford is entitled to a belated appeal.
5 In doing that, he would get a chance to appeal Judge
6 Gravely's decision. Which, you know, I guess, would
7 include whether he wants to argue this 59(e) stuff.
8 But if Your Honor does grant Austin relief, he's not
9 denied the ability to appeal Judge Gravely's order.
10 So we're arguing that he's had his one bite at the
11 apple, he just hasn't had the appeal.

12 THE COURT: Yeah, doesn't it seem, Ms. Ross, if
13 I did grant the belated PCR, doesn't that take care
14 of it? Don't you get the opportunity to argue at
15 that point if it's granted?

16 MS. ROSS: My understanding from Austin is that
17 it goes back -- if The Court finds that he was denied
18 his appeal, which I think it's clear that he was
19 [audio distortion] concede he was. The Court shall
20 review whether the petitioner was prejudiced by the
21 failure to obtain the review of a meritorious issue.
22 So that completely puts the burden on us at this
23 hearing to preserve that record. And in order to do
24 that, I want to ensure that the issues that were put
25 in the 59(e) motion, or somewhere set in the record,

1 if it's hybrid representation that was only because
2 Mr. Ariail just submitted Mr. Swofford's pro se
3 motion with the cover sheet, essentially. That was
4 not any fault of Mr. Swofford. He made an effort to
5 get that motion in a timely manner and have that
6 record preserved.

7 So we would argue since the burden is on
8 Mr. Swofford to make these effective allegations, he
9 should have an opportunity to fully set the record.
10 And while the issues were presented at the prior PCR,
11 because of the failure to a timely 59(e) motion and
12 appeal, I don't think anything from that 59(e) motion
13 is in the record up for review, that's my concern.
14 So, at this point, I'm trying to put back into the
15 record for review just the issues that he had in the
16 59(e).

17 THE COURT: All right.

18 MR. SMITH: But I'll say again, Your Honor,
19 that's The State's point is that Mr. Swofford is not
20 entitled to have his own personal 59(e) arguments
21 included. But I'll leave it at that. Thank you,
22 Your Honor.

23 THE COURT: Well, I think from The Applicant's,
24 perspective, he's, obviously, to preserve it, protect
25 it, make sure everything [audio distortion] 59(e),

1 [audio distortion] 59 is preserved here today. And I
2 understand The State's position that you can't have
3 hybrid representation. But doesn't -- to protect The
4 Applicant on this appeal, at this stage, I'm willing
5 to hear it. But you may have already protected it or
6 just by your argument, in of itself making it, if I
7 deny The State's motion, does that, in fact, protect
8 you and you're ready to go forward?

9 MS. ROSS: I believe so. I would add we have a
10 witness, John Reckenbeil, who has reviewed the
11 transcript and can layout the prejudice that he saw
12 with regard to the failure to -- and this was
13 addressed at the first PCR, but the failure for trial
14 counsel to move to suppress some evidence for not
15 being effective chain of custody. And he can address
16 that in a very A, B, C, D matter. In fact, he
17 prepared an email with attachments that lays that
18 out. And it's laid out from the trial transcript.
19 And it is, we would argue, already part of the PCR
20 but it clarifies this fresh blood versus blood
21 splatter issue that comes up in the case and goes
22 directly to Mr. Swofford's defense. And that was not
23 addressed in the order.

24 THE COURT: Okay.

25 MR. SMITH: Well, there's [audio distortion]

1 Your Honor, if I may. It's going to be The State's
2 position that we object to any testimony or argument
3 from Mr. Reckenbeil. Object to argument from him on
4 the basis that he's not counsel of record. Secondly,
5 any testimony from him because he is improper to get
6 opinion testimony on legal matters in front of the
7 court. And I have some legal citations I can provide
8 on that but cite several cases. The first being
9 Carter v. Brian, citation is 429 S.C. 298. It's a
10 opinion from Court of Appeals last year where the
11 Court of Appeals affirm the trial courts exclusion of
12 testimony from an expert. Instructing the expert's
13 testimony on issues of law is rarely admissible.
14 Court of Appeals cited multiple authorities on that
15 point and said that allowing a witness to give that
16 sort of testimony risk [audio distortion] sole source
17 of the law.

18 And I can cite a couple more but one going all
19 the way back to a post-conviction relief case from
20 2002, that is Green vs. State 351 S.C. 184. In that
21 case the Supreme Court affirmed the PCR court's
22 ruling that Green could not present testimony from an
23 expert on the issue of whether Green's criminal
24 defense lawyer had been deficient. The Supreme Court
25 found the expert did not offer factual evidence but

1 made legal argument about why the lawyer's
2 performance was not acceptable according to the
3 reasonable standards of professional conduct. For
4 those reasons, Your Honor, we don't believe the Court
5 should hear from Mr. Reckenbeil.

6 THE COURT: Okay.

7 Ms. Ross, what about that? That Mr. Reckenbeil
8 is an expert witness, basically; correct?

9 MS. ROSS: Well, we're willing to put him up as
10 an expert or just a witness who has thoroughly
11 reviewed the transcript and the discovery, the trial
12 discovery in the case. My understanding is he was
13 retained prior to my appointment, at some point, to
14 do just that. We'd argue Green v. State is
15 distinguishable because there the attorney testifies
16 as the expert to the ultimate issue of whether trial
17 counsel in PCR was ineffective or not. Or whether
18 his performance was deficient under reasonable
19 standard.

20 Here, that's the ultimate here. Here,
21 Mr. Reckenbeil is going to point out legal issue that
22 he saw with chain of custody, which would give rise
23 to the suppression argument. He's just going to
24 point out the issues as Mr. Swofford tries to present
25 them [audio distortion] pro se, 59(e), but it's not

1 very concise. And Mr. Reckenbeil can add some
2 precision to things that were already argued in the
3 59(e). But certainly, clear or effective showing of
4 what Mr. Swofford's talking about. Whether it's with
5 the blood splatter, fresh blood versus not fresh
6 blood issue.

7 THE COURT: Let me ask you, though, at the end
8 of the day, isn't that opinion testimony, isn't that
9 testimony, even under that standard, it may not be
10 exactly the ultimate issue but on the other hand, it
11 may be the ultimate issue. It sounds like he's given
12 some kind of opinion that Mr. Ariail or whoever
13 should have done this or should have done that. I
14 mean, is that not expert opinion testimony?

15 MS. ROSS: Well, I mean, it comes to whether --
16 my understanding of expert testimony, does it put a
17 fact more likely than not. And, I think, arguing it
18 as fact is just what he's thinking from the discovery
19 in the transcript, it's not an opinion on that fact,
20 it's just a clarification of those facts that are in
21 the transcript itself. So we would argue that's what
22 Mr. Reckenbeil is trying to offer to give some
23 explanation of why this issue is important in the
24 case.

25 THE COURT: But I thought I heard you say,

1 though, that he's going to say, though, that trial
2 counsel or counsel should have done something as a
3 result of what he found in the transcript. Did I
4 hear you right on that?

5 MS. ROSS: He's not trying to argue trial
6 counsel was ineffective or not based on that, he's
7 simply laying out issues that he saw within the chain
8 of custody that might give rise to the suppression
9 argument. And that would be evidence that we have to
10 show that could result in prejudice. And the
11 prejudice would be failing to make that suppression
12 argument.

13 THE COURT: Mr. Smith, anything else on that?

14 MR. SMITH: Yes, Your Honor. I started learning
15 about issues [audio distortion] my first year of law
16 school. And I thought that was one of the most
17 important things a lawyer does in a case. Sounds to
18 me like Mr. Reckenbeil --

19 I'm sorry if I mispronouncing your name.

20 -- but that he's going to offer argument today.
21 Even if he's just identifying issues, that itself
22 is -- that's the role of a lawyer. So sounds like
23 he's both the witness and trying to be counsel.
24 Although, again, I'll note that we have, as far as
25 I'm aware, we have no notice that he's counsel of

1 record on this case.

2 THE COURT: All right. So, Mr. Smith, if based
3 on your motion, as I understand, the sole issue that
4 you feel that should only be addressed in this PCR
5 hearing, is the timeliness of whether or not
6 Mr. Ariail filed a notice of appeal; is that correct?

7 MR. SMITH: It is, Your Honor. But I'll restate
8 it a little bit. I think as a matter of law, we're
9 stuck with the Court of Appeals finding that the
10 Notice of Appeal was not timely filed and served.
11 The Court of Appeals has already made that finding.

12 THE COURT: Right.

13 MR. SMITH: I think the only issue here is
14 whether Mr. Swofford wanted to appeal and whether
15 Mr. Ariail's failure to file the Notice of Appeal on
16 time denied him that right. And from The State's
17 position, I've been on several of these Austin cases
18 and I've never required any or argued that he has to
19 make any sort of showing that those issues have
20 merit. In all of these cases that I've had, if Your
21 Honor finds that is he entitled to Austin relief, the
22 case goes up to the Supreme Court and the Supreme
23 Court determines whether or not that decision was
24 correct. And if so, we briefed the original PCR as
25 if it had been timely filed.

1 So I'm not -- I'm not trying to hold
2 Mr. Swofford to a standard of trying to argue whether
3 his first PCR issues had merit. If Your Honor and
4 the Supreme Court agrees he's entitled to that
5 relief, that's something we argue on appeal from
6 Judge Gravely's order.

7 THE COURT: Not today, correct?

8 MR. SMITH: Correct, Your Honor.

9 THE COURT: Yeah.

10 MR. SMITH: We believe that the record from the
11 first PCR is set. The State's position is the only
12 question is whether he's entitled to appeal on that
13 ground by virtue of the late filing of the Notice of
14 Appeal.

15 THE COURT: Yeah, I'm in agreement with that. I
16 think the only issue before me in this PCR hearing
17 today is the late filing of the notice of appeal.
18 And whether or not I grant it under the Austin case,
19 and then it goes up from there and then gets back
20 down to the other issues are. I think my only issue
21 today that I can address is that issue. And nothing
22 else. So I guess you're making a motion to exclude
23 that testimony -- what exactly is your motion,
24 Mr. Smith?

25 MR. SMITH: Moving for the dismissal of anything

1 except the claim of whether he should be able to
2 appeal as a matter of law. And all testimony on that
3 issue.

4 THE COURT: All right. I'm going to grant that
5 motion. That's the motion I'm granting because in my
6 analysis, that really is the only issue that can be
7 determined at this particular stage. So I'm going to
8 grant that motion.

9 MR. SMITH: Thank you, Your Honor.

10 THE COURT: But I think, Ms. Ross, you're
11 protected. I mean, I think these are arguments down
12 the road that can be argued in the event, depending
13 on my decision is on the ultimate issue here, then
14 goes up and possibly comes back down.

15 MS. ROSS: Okay, Judge. Just note my objection
16 to that under Austin and Ace.

17 THE COURT: Your objection is noted.

18 All right. Now, anything else on any motion?

19 MR. SMITH: Your Honor, if the motion's been
20 granted, at this point, I think the only thing left
21 is to get testimony on whether Mr. Swofford was
22 denied the right to appeal.

23 THE COURT: And I think that's it.

24 And I'll hear from you, Ms. Ross.

25 MS. ROSS: Judge, if I may, I failed to protect

JOHN RECKENBEIL-DIRECT BY MS. ROSS

1 the record, I would briefly like to submit or proffer
2 the testimony that Mr. Reckenbeil has prepared for
3 court at this time.

4 THE COURT: I'll allow that, yeah.

5 MS. ROSS: He tells me he's on standby but I
6 don't see him on video. I think he has to be allowed
7 in. There we go, I can see him now.

8 THE COURT: All right.

9 MR. SMITH: And, Your Honor, [audio distortion]
10 the proffer but I just wanted to note The State's
11 objection.

12 THE COURT: Your objection is -- your motion has
13 been granted. So this is, essentially, a proffer by
14 Ms. Ross down the road.

15 All right, you may proceed.

16 DIRECT EXAMINATION

17 BY MS. ROSS:

18 Q Mr. Reckenbeil, am I pronouncing your name
19 correctly?

20 A Yes, anything close to that is perfectly fine.

21 Q All right. Now, how did you become to be
22 involved in this case?

23 A Several years ago, I believe, Ronnie saw my
24 involvement as a legal analysis for WYFF, WSPA, with the
25 former sheriff of Greenville County, Mr. Lewis, and asked

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1 me to look at this case from the standpoint -- because at
2 the time, Master Deputy Lewis, who was [audio distortion]
3 who is now convicted former Sheriff Lewis, was involved in
4 the gathering of evidence. So that's why he asked me to
5 look at the case with the involvement of Mr. Lewis.

6 Q And you did review that case?

7 A Yes, ma'am. I reviewed the entire transcript
8 and the evidence that was presented to include all the
9 materials that he had in his possession. And the
10 discovery that was in his possession as well.

11 Q Now, was this after he had filed his PCR? What
12 time period did this occur?

13 A This was, I believe, the later portion of '20 --
14 it's after -- there's no doubt it was after the entry of
15 the denial of the 59(e), no doubt it was after the denial
16 of the order to dismiss the PCR. So it was during the
17 timeframe when, I believe, that I got -- the second PCR
18 was filed.

19 Q Okay. And when you reviewed that material, did
20 you find -- what issue did he have you look at and what
21 were your findings?

22 A I looked at the chain of custody issue and also
23 the blood issue. That's two things. Number one, is that
24 Mr. Johnson, the trial counsel, stipulated in the
25 beginning of trial that there was no need to have

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1 everybody in the chain of custody come forth and
2 testifying to their touching and carrying the evidence to
3 and from certain locations. But there was a particular
4 issue as to a vital piece of evidence that was deficient
5 in the context that there is no evidence, that I see, from
6 property records to determine which piece of wall,
7 actually, SLED tested and was testified to at trial.

8 And secondly, it was in open argument that
9 trial Counsel Johnson said that he, basically, conceded to
10 Mr. Swofford's blood being at the scene and being the
11 blood that was going to be, basically, testified to.
12 When, in fact, SLED testifies that there was no blood on
13 the piece of wall that they presented at trial. Which is
14 very significant. So I think there was really two issues.
15 But one, the main issue, of the chain of custody, that
16 there should have been a motion to suppress in the
17 beginning of trial. And not conceding of, basically, the
18 entire chain of custody of the missing witnesses.

19 Q Now, you prepared an email for me with
20 attachments of certain page numbers of the transcript?

21 A Correct.

22 Q [Audio distortion], are you familiar with that?

23 A Yes, ma'am. I'm sorry, I didn't hear you [audio
24 distortion] but yes, ma'am, I'm familiar with that.

25 Q All right. Have you -- have you emailed -- have

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1 you emailed that to me? Can I forward that to The Court?

2 A Absolutely. Along with the attachments of the
3 trial transcript that are cited. I think that that lays
4 it out.

5 Q All right. And everything in this is
6 attachments from discovery or the trial transcript; is
7 that correct?

8 A That's correct.

9 Q So there's no other things involved?

10 A That's correct.

11 Q At this time, I'm going to attempt to do that.
12 Sent to Mr. Taylor and the Judge [audio distortion] link
13 [audio distortion] that shows that. Can you just,
14 briefly, for The Court explain what you're seeing in the
15 transcript that you found shows prejudice from trial
16 counsel not objecting to the chain of custody of the blood
17 evidence? Blood and hair evidence?

18 A Just, briefly, not going into every single thing
19 but there is testimony that several pieces of the wall
20 that are ultimately cut out. But there is no property
21 record or no definitive evidence as to what pieces of the
22 wall are stored at Greenville County and then, ultimately,
23 taken onto SLED. And it's vital about that because the
24 fact that the PCR court makes their decision that a piece
25 of hair taken from the wall, in fact, matches Ronnie

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1 Swofford and is one of the reasons why they uphold and
2 deny the PCR. I think that the outline that I've set
3 forth puts forth in the trial transcript of how many
4 pieces are, actually, taken by Sergeant Shaw and also
5 Investigator Derby. But I, literally, say that two pieces
6 of the wall are the same exhibit that were introduced at
7 trial. That were taken at two different times from two
8 different individuals. And it does not account for which
9 piece was, actually, taken to SLED and, ultimately, tested
10 to determine, you know, which piece had the hair on it
11 that Judge Gravely relied upon in upholding or denying the
12 PCR.

13 Q Now -- and the wall pieces are important because
14 there was testimony about blood splatter on the wall in
15 this crime scene; correct?

16 A That's correct.

17 Q And that was throughout the trial, continued
18 testimony about blood splatter on the wall?

19 A Yes, from both people who, in fact, took pieces
20 off the wall. Derby and Shaw said that and Miller said
21 that they, actually, saw blood on the wall, that's why
22 they cut out these pieces. And there's some back and
23 forth about whether or not a layperson could testify to
24 whether or not something was fresh blood or dried blood,
25 but it was definitive in the fact that they all testified

JOHN RECKENBEIL-DIRECT BY MS. ROSS

1 that there was blood on these pieces of wall. And then,
2 ultimately, SLED concludes that there's no blood on the
3 wall that they tested.

4 Q So despite the continued testimony about blood
5 and fresh blood on the wall, there was no blood on the
6 wall?

7 A Correct.

8 Q And now, about Miller's testimony, he was a
9 rebuttable witness; is that correct?

10 A Yes, later part of the transcript.

11 Q And he was the last witness that the jury heard
12 from?

13 A Correct.

14 Q And then following that, Mr. Johnson's closing
15 arguments said that there was no fresh blood found on the
16 scene, do you recall that?

17 A Yes, vaguely, yes.

18 Q And on Page 648 of the transcript, around Line
19 24. And this is just after a witness has testified about
20 fresh blood?

21 A Correct.

22 Q At the scene?

23 A Correct.

24 Q Now, what was the importance of this fresh
25 blood?

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1 A Well, they were, of course, they were trying to
2 establish whether or not that this -- there were two
3 things. Whether or not that Mr. Swofford's defense, that
4 he was shot prior to, that this was a previous incident,
5 that his blood was dried. And that was the argument by
6 trial Counsel Johnson that Ronnie was shot previously.
7 And therefore, this blood couldn't be fresh. And second,
8 whether or not it was just splattered regular blood. But
9 what I see is the issue is that there is just overwhelming
10 evidence that there was blood seen by these investigators
11 on this wall, and then SLED comes back with the fact that
12 there is no blood whatsoever on the wall that contains the
13 piece of hair that Mr. Swofford, ultimately, is used by
14 Judge Gravely to sustain or deny the PCR. That is
15 substantial.

16 Q Are you familiar with Judge Gravely's order of
17 dismissal of Mr. Swofford's PCR?

18 A Yes, I have it here.

19 Q On Page 17 of that, does that effectively
20 address the blood issue that you're talking about from
21 Mr. Swofford's trial?

22 A Well, it doesn't go into what I just discussed,
23 no. It's -- it's deficient in that context.

24 Q And that's because SLED did not discover any
25 blood on the wall at all. There was no blood splatter?

JOHN RECKENBEIL-DIRECT BY MS. ROSS

1 A Right.

2 Q Is there anything else that you'd like to
3 proffer for the record, at this time?

4 A No, that would be my showing.

5 MS. ROSS: And I would, at this point, offer or
6 ask that the package that I emailed for the Judge to
7 be made a Court Exhibit, if that's possible?

8 THE COURT: All right. You sent -- we're trying
9 to figure out, logistically, how that came and where
10 to find it. So you sent it to the?

11 MS. ROSS: I attempted to send it to Mr. Taylor
12 and Your Honor, forwarding it from a Carrie Armstrong
13 through me. I'll try it again.

14 MR. SMITH: I can speak to that. I did get an
15 email from Susannah with a Dropbox link but I can't
16 open it. That's either because something, maybe,
17 wrong with the link or the firewalls at place in our
18 office prevents me from getting anything off of
19 Dropbox.

20 THE COURT: It could be the same with me, as
21 well, because I don't have it either. I don't have
22 the email at all.

23 MS. ROSS: Okay, Your Honor. Well, I will
24 attempt to fix that. But I'll move on right now at
25 this point. And get that to, Your Honor.

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 THE COURT: All right, let's do this. Send it
2 to Ms. White. Jwhite@greenvillecounty.org. Send it
3 to J, letter J, jwhite@greenvillecounty.org.

4 MS. ROSS: Okay.

5 THE COURT: That should do it. She's here in
6 the courtroom.

7 MS. ROSS: Okay.

8 THE COURT: All right, is that it for proffer?

9 MS. ROSS: Yes.

10 THE COURT: Okay. All right, you may proceed on
11 the issue, Notice of Appeal issue.

12 MS. ROSS: Thank you, Your Honor. At this time
13 we call Ronnie Swofford.

14 RONNIE SWOFFORD, after being duly sworn,
15 testified a follows:

16 DIRECT EXAMINATION

17 BY MS. ROSS:

18 Q Good afternoon, Mr. Swofford. Now, are you
19 aware why we're here? What's going on procedurally with
20 this case?

21 A Yes, ma'am, I am.

22 Q Now, Mr. Ariail represented you at PCR; is that
23 correct?

24 A That's correct.

25 Q And can you -- and you submitted the 59(e)

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 motion and requested that be filed on your behalf; is that
2 correct?

3 A Actually, that's incorrect.

4 Q Okay. Can you clarify?

5 A Yes, ma'am. What I did was, probably, two
6 months after the hearing, I had [audio distortion]
7 everything to [audio distortion] that--

8 THE COURT REPORTER: Judge, he's breaking up
9 really bad.

10 THE COURT: Mr. Swofford, the court reporter is
11 having a hard time and I am too, you're breaking up.
12 Maybe get closer and see if that works.

13 THE WITNESS: Okay, how's this?

14 THE COURT: Still breaking up a little bit. All
15 right, try it again and let's see.

16 THE WITNESS: Okay, can you hear me now?

17 THE COURT: She's having a hard time hearing it.
18 I don't know what it is, you're just breaking up.

19 Do you have any suggestions?

20 (WHEREUPON, technical issues were being worked
21 out.)

22 THE WITNESS: Can you hear me now?

23 THE COURT: Still the same.

24 THE WITNESS: May I ask somebody to help me real
25 quick?

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 THE COURT: Yeah.

2 THE WITNESS: Thank you.

3 (WHEREUPON, technical issues were being worked
4 out.)

5 THE COURT: Ms. Ross, while we're waiting on
6 that, Ms. White can't open the attachment either.

7 MS. ROSS: Okay. I just tried to send another
8 one, that's all I've got. If that doesn't work, I'll
9 try to lay the record through Mr. Swofford. He's
10 familiar with it, I believe.

11 THE COURT: Okay.

12 MR. SMITH: Your Honor, may I say one thing?

13 THE COURT: Yes, sir.

14 MR. SMITH: And I understand the proffer, I just
15 wanted to say one thing just for the record. If the
16 Supreme Court does decide they want to hear more
17 about the -- all the preservation details and
18 technicalities, then I think The State would like to
19 offer more on that at the time, too.

20 THE COURT: All right.

21 Can you hear me, Mr. Swofford?

22 MS. ROSS: Can you hear me, Mr. Swofford?

23 MR. SWOFFORD: I can hear you guys fine.

24 MR. SMITH: I have a suggestion, Your Honor.

25 When this has happened in similar WebEx hearings

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 before, we've had The Applicant call in from a phone
2 and he can still participate over the camera. But if
3 the audio is muted we can, maybe, hear better over
4 the phone. Seems like the microphone is the problem.

5 THE COURT: Yeah, that's what it sounds like.
6 Do they have access -- the question is do they have
7 access to a phone over there?

8 MR. SWOFFORD: Yes, sir.

9 THE COURT: Technology is great, sometimes it's
10 not so great.

11 (WHEREUPON, technical issues were being worked
12 out.)

13 THE COURT: Speak again so we can make sure.
14 Count to five.

15 DEPARTMENT OF CORRECTIONS: One, two, three,
16 four, five.

17 THE COURT: All right.

18 (WHEREUPON, technical issues were being worked
19 out.)

20 THE COURT: All right, just need you to speak
21 up, Mr. Swofford.

22 MR. SWOFFORD: All right, how's this?

23 THE COURT: Okay, we can hear him.

24 MS. ROSS: I can hear you, Mr. Swofford.
25

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 BY MS. ROSS:

2 Q Let's talk about, did you want an appeal of your
3 post-conviction relief hearing of Mr. Ariail?

4 A Yes, ma'am, I did.

5 Q And did you notify him that you wanted an
6 appeal?

7 A Yes, ma'am. What I did was, previously, before
8 I ever received an order that it was dismissed, it was
9 noticed on this alleged pro se motion, it had exhibits.
10 Well, this was something I gave Mr. Ariail the day of the
11 hearing. And what I did was is I whited out the top
12 portion of it and I sent to him sometime in December or
13 January. In the event that if it was denied, that these
14 are issues I wanted to preserve. And on this alleged --
15 it's not pro se because I didn't try to file it myself. I
16 gave it to him because I already had had it made out and
17 [audio distortion]. Some of the pages are missing because
18 looking at the transcript that was issued these page
19 numbers. And I alluded to some of the chain of custody
20 issues more in depth because I had this motion. And so,
21 there's pages of exhibits. But this actual pro se motion
22 was not done to be used as a pro se motion from me. I
23 know what the Supreme Court stated in 2015 about hybrid
24 representation. I sent it to him because I already had it
25 written up, in the event that they dismissed stuff, I

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 would have it preserved. And that's, basically, all the
2 issues I put down to just [audio distortion] more into
3 four or five pages.

4 Q Is this what you're talking about? Can you see
5 that?

6 A Yes, ma'am, that's it.

7 Q All right. And that's part--

8 A Like I said, you'll notice that Exhibit A
9 through A-13, this stuff was done way prior before the
10 order of dismissal was done. All I did was change the
11 heading of it because I gave this, actually, to Mr. Ariail
12 the day of the hearing in a stack of paper work.

13 Q And you're familiar -- you have part of your
14 package, there was a 59(e) motion that Mr. Ariail
15 submitted, correct?

16 A Correct.

17 Q And that's part of the record?

18 A Yes.

19 Q That is part of the record?

20 A Yes, ma'am. I believe what he done is he just
21 took what I did and submitted it.

22 Q What was your intent for him to do?

23 A Well, basically, I was just going through
24 another process of what I was wanting him to talk to me
25 about in this hearing. And that's why these exhibits were

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 made available to him. So, basically, what did, is I
2 whited out that heading at the top and put motion to alter
3 or amend to use that for him to go by for a hearing or as
4 a 59(e) when that event arose.

5 Q All right. Now, on -- so you set out the issues
6 you wanted to have preserved in a 59(e), and then you
7 wanted an appeal after that; is that correct?

8 A Yes, ma'am, I did. Preserved so I can have the
9 appeal for real.

10 Q Okay. But you did not, in fact, get an appeal;
11 did you?

12 A No, ma'am. It was dismissed after about two
13 years due to it being untimely filed.

14 Q And the [audio distortion] has an order dated
15 September 27, 2018, is that where it was dismissed?

16 A That's correct, yes, ma'am.

17 Q Now, so you never got your one bite at the apple
18 as far as an appeal for PCR?

19 A No, ma'am. I didn't get a bite at the apple,
20 nor did I get the opportunity to put all of my exhibits or
21 all of my allegations to preserve it on the record.
22 Because I'm not sure if Mr. Ariail just forgot to put in
23 those pages in or what. Which is why I requested the
24 chain of custody issue to be explained more from my end,
25 just to -- because I didn't see it in here.

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 Q All right. Now, let's talk about that, briefly.
2 What -- what -- did your trial attorney contest the chain
3 of custody for the wall evidence at all?

4 MR. SMITH: Your Honor, I'm going to object,
5 this is getting into the issue of Your Honor -- upon
6 which Your Honor granted The State's motion to
7 dismiss.

8 THE COURT: Ms. Ross.

9 MS. ROSS: Your Honor, you ruled on that and
10 over my objection and I would just offer that as a
11 proffer.

12 THE COURT: All right. I'll sustain the
13 objection.

14 MS. ROSS: Will you accept the proffer, Your
15 Honor?

16 THE COURT: I'll allow a proffer. I sustain the
17 objection but I'll allow the proffer.

18 BY MS. ROSS:

19 Q Now, Mr. Swofford, what -- what did you feel was
20 not preserved in the order in your original PCR case that
21 you brought up in your PCR?

22 A Well, according to Judge Gravely's order, he
23 stated that my argument wasn't persuasive about blood
24 issue. It's plain and simple as this. That blood was
25 referred to over 60 times of mine being in the home. And

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 which, in fact, it was not. The jury was surprised with
2 this information. My attorney conceded to that issue by
3 stating my blood was there and argued false narrative
4 about dry or freshness of blood, when there was no blood,
5 period. And then there was no chain of custody ever
6 brought up about [audio distortion] and who signed out
7 what for any evidence. [audio distortion] ignore for
8 eight days from July 27 through August the 4th.

9 Q Now, when you're talking about that, that would
10 be Exhibit 1 of your 59(e) motion that was attached to
11 Mr. Ariail's 59(e) motion; that's a part of the record;
12 correct.

13 A That's correct.

14 Q And that this. This is the chain of custody
15 where you find that they're object--

16 A Right.

17 Q Now, just talking about -- and also, you had
18 Exhibit A-3, where there's no blood indicated on the wall
19 whatsoever?

20 A Correct.

21 Q And you would like the Judge to consider all
22 those exhibits that are attached to the 59(e) motion that
23 you submit; is that correct?

24 A Well, if that's what my wish would be, that's
25 what I asked Mr. Ariail to do. And I gave him the package

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 at the hearing. I don't believe they were submitted at
2 the hearing. If they were I was unaware of it. I didn't
3 hear it be presented as exhibits. I then changed the
4 heading to [audio distortion] judgment 59(e) in the event
5 I was turned down, just to preserve the issues that were
6 on the record.

7 Q Now, let's just talk about, briefly, about what
8 the problem was with that. You had -- you gave a
9 statement and testified at trial; is that correct?

10 A Yes, ma'am.

11 Q And your statement was that you'd been
12 accidentally shot by the victim prior, like a few days, a
13 week prior to--

14 A It was like a few days prior to trial,
15 Mr. Wooten was under the influence of drugs. And he
16 accidentally shot me when he almost fell in the kitchen.
17 Coming out of his back pocket and he went to get it and he
18 almost fell. He grabbed onto the stove and shot in my
19 direction.

20 Q Right. Now, there was a lot of testimony in
21 opening about blood evidence in the case against you. And
22 again in closing. Why were they trying to get in? What
23 was the false narrative about the fresh blood that you
24 wanted to preserve on the record?

25 A All I'm saying is The State didn't open the

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 door, my attorney did in opening arguments. And I
2 understand that's not evidence. But he said, I'll be
3 straight up with you today, the blood tissue found in the
4 home belonged to my client, Mr. Swofford. And all
5 throughout trial his blood referenced repetitively brought
6 up. When the SLED agent asked -- when he told the
7 solicitor that the blood was not indicated on the wall,
8 Mr. Johnson, trial counsel, said, I have no questions for
9 this expert. And he could have probably explained right
10 then or blew the roof off of it, if that's what you want
11 to say, well, where did you get this blood from?

12 And, at that time, I thought that The State
13 should have corrected the wrong information. Whether
14 [audio distortion] or didn't understand the evidence is
15 one thing, but I felt The State had the duty to correct
16 it. They knew that there was no blood on the wall. And
17 she said, Okay. If my attorney didn't know it at the
18 beginning of the trial, he should have known it then. And
19 because he stated -- she stated that there was no blood,
20 okay. But he didn't have no questions for that expert.
21 Never cross-examined her.

22 Q And so do you feel like it -- that it wasn't --
23 there wasn't enough emphasis on the fact that there was no
24 blood splatter evidence at all in your case?

25 A I'll say this, in the beginning, Sergeant Derby

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 stated when he took a section of the wall out, it had
2 reportedly blood stains on the wall, that he thoroughly
3 inspected. The alleged piece of wall was exposed to the
4 elements and to four different people for eight days, that
5 they never followed chain of custody procedures. Two and
6 a half years later, this alleged piece of wall was tested
7 for blood and it was found to be negative. But all of a
8 sudden, they found the hair. Which, potentially, could
9 have been cross contaminated when they took it back down
10 and stuck the trajectory rod inside the hole of this
11 section of the wall. It's not incumbent to find a hair in
12 the home, I have been there many times. But it would be
13 to find my blood on the wall. Which they never found.
14 But it was constantly said over and over again, over 50
15 times in trial. [audio distortion] there's blood, DNA --
16 there's blood, DNA tissue, etcetera, over and over.

17 Q And she referred to that in opening and in
18 closing; is that correct?

19 A She said it in closing. My attorney opened it
20 up in opening statement.

21 Q She called a rebuttal witness at Page 636 of the
22 transcript. Detective Miller, I believe?

23 A Right. Mr. Miller was the lead detective in
24 this case. And that's who Mr. Johnson, trial counsel, got
25 into the debate with about the freshness and the liquid

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 state, if it was fresh blood. And he got into -- I think
2 my attorney stated, You don't have to be a expert to know
3 it's fresh blood. But he was just saying whether it was
4 dry or fresh.

5 Q So Mr. Miller testified about fresh blood right
6 before the case went to the jury; correct?

7 A Right. It was about a three page debate of
8 freshness of alleged red colored substance that they
9 purported to be blood and, in fact, it was not.

10 Q And what did that do to your alibi?

11 A Well, in my opinion, it, essentially, puts me at
12 the crime scene and says that I did something. A jury
13 thinks that your own attorney is arguing the freshness of
14 blood in the beginning he said, You will find his blood
15 and tissue at the crime scene. I mean, it's a matter of
16 what argument you're going to put up. But in their minds,
17 it prejudice me severely. A hair can be there any time
18 but blood is just not going to be splattered on the wall.

19 Q And on Page 648 of the transcript in his
20 closing, your trial attorney said, Nobody said anything
21 about fresh blood.

22 A What page?

23 Q Page 648, Line 24. Let me double check.

24 A What [audio distortion] as blood evidence,
25 ladies and gentlemen, what they didn't do is tell me how

RONNIE SWOFFORD-DIRECT BY MS. ROSS

1 old it was and how long it had been there. There's
2 nothing in any reports that says that we looked at this
3 blood and it was fresh. Nothing. Nobody in The State's
4 case in chief said anything about that blood being fresh.

5 Q And he's telling that to the jury minutes after
6 they've heard the witness testify about seeing fresh blood
7 on the wall?

8 A Correct.

9 Q Okay. Is there anything else that you'd like to
10 add?

11 A I'd like to know where the rest of the pages
12 were to that 59(e) that I submitted. But I take that, in
13 my opinion, The State's position is that -- I believe it
14 should be allowed because I sent it in a timely fashion.
15 I went to the mail room and verified that I received no
16 mail from the solicitor -- I mean, [audio distortion] the
17 state office or Mr. Ariail's office in reference to this
18 January 2016, in reference to any order or anything. So
19 when I sent in this information, it was with hopes of him
20 to -- I felt like it may have be been turned down anyway,
21 but I wanted to be prepared that everything I brought up
22 would be preserved for [audio distortion] review. That's
23 why Mr. Reckenbeil was trying to explain the chain of
24 custody issue because it's missing [audio distortion]
25 59(e). If you notice at the bottom of the page, my only

RONNIE SWOFFORD-CROSS BY MR. SMITH

1 shows 1, 2 and 4. And I have other pages that were
2 indicating about the chain of custody. About it being not
3 followed.

4 Q Okay.

5 Well then, I've got no further questions at
6 this time.

7 THE COURT: All right, cross?

8 MR. SMITH: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q Mr. Swofford, why do you think it's so
12 significant whether or not there was blood at the scene?

13 A I think that's where the case -- the case went
14 wrong. In the beginning it was a section of the wall with
15 blood and no hair. After two and a half years and the
16 detective having access to this wall, that they failed to
17 sign in or out, then all of a sudden, two years later it's
18 no blood but a hair. Where did the hair come from? Where
19 did the blood go? You know, it's not uncommon to find a
20 hair in this home. I have been in this house many times.
21 One of the issue I brought up about the hair was that the
22 head hair -- they alleged that I got shot in the arm in
23 front of this wall. But there was head hair, what does
24 that mean? It doesn't support their case.

25 But the blood, however, that they kept

RONNIE SWOFFORD-CROSS BY MR. SMITH

1 bringing up saying blood is on the wall, this is his
2 blood, it's fresh blood, it just happened. It's very
3 important because this is prejudicial because I know my
4 blood wasn't there. I never said my blood was there
5 [audio distortion] uncommon [audio distortion] say, I
6 guess, not some [audio distortion] accidentally shot but
7 that was six days prior. Then they said there was blood
8 on the [audio distortion] there was [audio distortion] but
9 didn't match the weapon. They said it was [audio
10 distortion] but not [audio distortion] it would be
11 consistent with a match.

12 So, you continually say my blood was at a
13 crime scene, people identify with that. And, basically,
14 everything that's on this world, they identify with the
15 scientific facts of it's blood. If you see red splatter,
16 it's blood. Well, it was tested, it was not my blood. It
17 was not blood at all. I don't know what it was. It is
18 not blood. It should not have been before the court, it
19 should have been [audio distortion] Mr. Johnson
20 inadvertently or erroneously argued that fact. I don't
21 know what he understood but it wasn't blood.

22 Q But your blood wasn't at the scene, though?

23 A No, sir, it was not.

24 Q It was not? Look at Page 264 of the transcript,
25 please.

RONNIE SWOFFORD-CROSS BY MR. SMITH

1 A Okay. Now, are you referring to the PCR
2 transcript or actual transcript?

3 Q Trial transcript.

4 A One second. Page 264?

5 Q You confirm at the top that his is a A Hefnie
6 [ph] testifying? At the top of the page?

7 A This is Detective Miller.

8 Q On Page 264?

9 A I'm sorry, I don't have the one transcript.
10 They only let me come up here with one. I can't confirm
11 or deny it.

12 Q Didn't the investigators swab your DNA to
13 compare it to DNA blood tissue found on the kitchen floor?

14 A That's what they did. Detective Miller
15 requested blood slash tissue. It wasn't DNA for blood.
16 And in his testimony he said, I request DNA for blood.
17 The results from that were -- that results there were no
18 visible stains -- hold on one second.

19 Q I'm not asking you about stains, Mr. Swofford,
20 didn't they find your blood on the floor?

21 A No, sir.

22 Q Okay.

23 MR. SMITH: Your Honor, I would just direct your
24 attention to Page 264.

25 THE COURT: All right, noted.

RONNIE-SWOFFORD-REDIRECT BY MS. ROSS

1 MR. SMITH: That's all the questions on the
2 proffer. I have no questions on the Austin issue.
3 Thank you.

4 THE COURT: All right, any redirect, Ms. Ross?

5 MS. ROSS: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. ROSS:

8 Q Now, Mr. Swofford, there wasn't blood and tissue
9 on the kitchen floor, there was a bullet casing on the
10 kitchen floor; is that correct?

11 A That's right. When they asked for blood, as for
12 that, they stated there was no appreciable stains to do a
13 blood test. That said they had to send it straight to PCR
14 for the piece of genetic material, which is tissue or
15 possible hair. The appreciable stain was they found no
16 blood to test. You have to do a serology test. They said
17 [audio distortion] serology test, that it did not work,
18 that it would ruin the piece of material.

19 Q So on Page 262 and 263, before that testimony,
20 the witness is talking about how they found a bullet
21 casing and they didn't see anything on it but they did
22 take a swab of it, then they tested that swab. And then
23 that returned DNA matching you from the--

24 A [Audio distortion] that was the genetic tissue
25 that they stated they had to test because there was

MILLS ARIAIL-DIRECT BY MR. SMITH

1 appreciable stains for blood. SLED testified we found no
2 blood, we had to send it to test the tissue.

3 Q And they took a swab off the bullet casing and
4 they sent that to SLED to be tested, correct?

5 A They found it underneath the seat or something,
6 in the floor.

7 Q Okay. Okay.

8 All right, I've got no further questions.

9 THE COURT: Anything else, Mr. Smith?

10 MR. SMITH: No, Your Honor.

11 THE COURT: All right.

12 Any other witnesses, Ms. Ross?

13 MS. ROSS: No, Your Honor.

14 THE COURT: All right.

15 Any motions?

16 MR. SMITH: Well, Your Honor, I'd like to get
17 maybe just a few questions from Mr. Ariail on the
18 appeal issue.

19 THE COURT: All right.

20 DIRECT EXAMINATION

21 BY MR. SMITH:

22 Q Mr. Ariail.

23 A Yes.

24 Q Okay. So, obviously, you filed a Notice of
25 Appeal [audio distortion] this case. Did Mr. Swofford,

MILLS ARIAIL-DIRECT BY MR. SMITH

1 did you ever discuss appealing and he indicated he wanted
2 to?

3 A At some point, normally, what I do is I would
4 have a discussion with him either at the end of the
5 initial PCR hearing, ask him if he wanted to appeal, the
6 decision was not in his favor. That's my normal approach.
7 And most of these I -- I go an appeal. And on this case,
8 and I'm trying to go back on memory and remember this five
9 years ago. He asked me to file Rule 59. I did it outside
10 the timeframe. To the best of my recollection, I don't
11 know why. But my intent was to try to preserve the
12 information or, at least, have The Court take a look at it
13 again. Then appeal it after that was done.

14 Q Was it your understanding that he wanted you to
15 appeal?

16 A Yes.

17 Q Okay.

18 I think that's it, Your Honor.

19 THE COURT: All right, any cross, Ms. Ross?

20 MR. SMITH: We can't hear you, Susannah.

21 MS. ROSS: No, Your Honor.

22 THE COURT: All right.

23 Any other witnesses, Mr. Smith?

24 MR. SMITH: That's The State's case, Your Honor.

25 THE COURT: All right.

1 Anything else from any of the parties?

2 MR. SMITH: Your Honor, I'll concede on the
3 Austin issue.

4 THE COURT: All right, the court will grant
5 that.

6 Ms. Ross, will you prepare an order on that?

7 MS. ROSS: Yes, Your Honor.

8 THE COURT: All right, anything else?

9 MR. SMITH: No, Your Honor.

10 MS. ROSS: Thank you, Your Honor.

11 THE COURT: All right.

12 MR. SMITH: And I'll just say whenever the
13 hearing is over, I'm going to disconnect the call
14 from Mr. Swofford.

15 THE COURT: Okay.

16 MR. SWOFFORD: Thank you, Your Honor.

17 MS. ROSS: I believe, I've got some emails.
18 Mr. Reckenbeil broke up this material he had and I'll
19 be sending that directly.

20 THE COURT: All right. Thank you.

21 MR. SWOFFORD: Thank you.

22 THE COURT: All right.

23 (WHEREUPON, the proceedings were concluded.)
24
25

1 CERTIFICATE OF REPORTER

2

3

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)

6

7

8 I, APRIL P. HERRON, Official Court Reporter for

9 the Thirteenth Judicial Circuit of the State of South

10 Carolina, do hereby certify that the foregoing is a true,

11 accurate and complete Transcript of Record of the

12 proceedings had and evidence introduced in the trial of

13 the captioned case, relative to appeal, in the Court of

14 Common Pleas for Greenville County, South Carolina, on the

15 Eighth day of November, 2021.

16 I do further certify that I am neither of kin,

17 counsel nor interest to any party hereto.

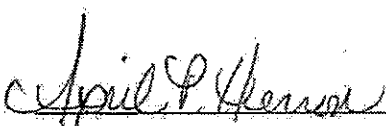
18

19 January 31, 2022

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23 

24 APRIL P. HERRON, Court Reporter

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1 motions --

2 MR. JOHNSTON: I'm interested in the text messages
3 that were just referenced here. I am wondering -- I
4 have seen the discussion about them, but I haven't seen
5 anything that was printed off or if anybody noted them,
6 but I do -- it might be some significance here.

7 Apparently they were in electronic format on this
8 phone. I wonder if the -- if the prosecution or the
9 police have done anything about these text messages.

10 MS. HODGE: Unfortunately they did not. They
11 returned the phone to Mr. Wooten. There was no
12 forensics analysis of the cell phone, so it would be
13 the testimony of the investigating officer that he
14 observed them.

15 THE COURT: Okay. Sergeant Weiner is still in the
16 courtroom, if you have any questions you want to ask
17 him with respect to the content of the text messages, I
18 think all he said was that he was trying to locate him
19 at 3:00 in the morning.

20 MR. JOHNSTON: I have his report, Your Honor. I
21 think that's satisfactory for what I can do.

22 THE COURT: Okay. All right. Anything else?

23 MS. HODGE: Mr. Johnston has been kind enough to
24 tell me he would be willing to stipulate to some of our
25 chain of custody witnesses. If we want go ahead and

1 get that on the record.

2 THE COURT: Yeah. Okay.

3 MR. JOHNSTON: That -- that's fine, Your Honor.

4 Anyone who is just going to testify that they took
5 something from one person and gave it to another, and
6 that's all their testimony is, we'll stipulate to their
7 testimony.

8 THE COURT: All right.

9 MS. HODGE: For the record, that would be Ms. Kara
10 Bennett from our property and evidence room. Israel
11 Flounders, he's in the property and evidence room as
12 well.

13 Investigator Wayne Campbell drove a piece of
14 evidence from P&E and deposited it at SLED. Deputy
15 Jonathan Howard, the same thing. He drove a piece of
16 evidence from property and evidence to SLED.

17 Doris Yarborough would be the evidence recipient
18 at SLED. Selena Kinard would an evidence recipient at
19 SLED. They do no testing -- none of these witnesses
20 would have any type of testing, or opening of any
21 seals. They were here as chain witnesses to verify the
22 integrity of the items.

23 THE COURT: Okay.

24 MR. JOHNSTON: That is correct. We feel there is
25 no need to produce those sorts of witnesses in this

J. DERBY -- DIRECT BY MS. HODGE

1 BY MS. HODGE:

2 Q Can you -- can you say where exactly it is?

3 A It is to the right of that red bucket.

4 Q And that was underneath the cabinet?

5 A Yeah, inside the cabinet.

6 Q I show you State's 37, 38 and 39, what are
7 those pictures of?

8 A This is the kitchen wall with the projectile
9 hole.

10 Q And in relation to the sink, where is the wall?

11 A On the opposite side of that.

12 Q Those are all true and accurate representations
13 of that wall when you took the photos?

14 A Yes.

15 MS. HODGE: I would move to admit State's 37
16 through 39.

17 MR. JOHNSTON: Without objection.

18 THE COURT: Okay.

19 (STATE'S EXHIBITS NOS. 37 THROUGH 39 RECEIVED INTO
20 EVIDENCE.)

21 BY MS. HODGE:

22 Q State's 37 and 38?

23 A These are close-up pictures. It's kind of hard
24 tell a little bit -- but the left one is actually a
25 projectile hole. The right one, at the time, I didn't

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165

J. DERBY -- DIRECT BY MS. HODGE

1 know what it was. It appeared to be some tissue -- I'm
2 sorry fabric, a wad of fabric.

3 Q It looks like two holes.

4 A It does.

5 Q There are not two holes there?

6 A No. One on the left is the projectile hole and
7 the right is the fabric.

8 Q And then 39?

9 A Is an another close-up picture of that, with
10 the scale to show the relationship between the two
11 items, the hole and the fabric.

12 Q Now, why is it important to use that scale?

13 A Just to give us a more accurate representation
14 of it, the actual size of the hole and the stains
15 around the hole.

16 Q Did the kitchen wall have these kinds of stains
17 anywhere else on it?

18 A Not that I -- those are the areas that I really
19 focused on, the ones I could actually see.

20 Q And any other piece of the wall that looked --
21 that had this reddish look or fabric or a hole in it
22 anywhere else?

23 A No, not that I saw.

24 Q All right. What did you eventually do with
25 that section of the wall that you had scaled off?

J. DERBY -- DIRECT BY MS. HODGE

1 A After it was photographed, it was cut away from
2 the wall and then it was collected --

3 COURT REPORTER: I'm sorry.

4 THE WITNESS: It was cut away from the wall and
5 then it was collected.

6 BY MS. HODGE:

7 Q I show you 40 and 41, do you also go around the
8 entire house?

9 A Yes, I did.

10 Q And what are these photographs of?

11 A This is going to be the back yard of the -- at
12 the kitchen door.

13 Q Are they true and accurate representations of
14 the home as you photographed it that night?

15 A Yes, they are.

16 MS. HODGE: I move to admit.

17 MR. JOHNSTON: Without objection.

18 THE COURT: Okay.

19 (STATE'S EXHIBIT NOS. 40 AND 41 RECEIVED INTO
20 EVIDENCE.)

21 BY MS. HODGE:

22 Q And why is it important to take these
23 photographs?

24 A This is showing the actual scene, all angles
25 from outside to the inside. Showing what I saw at the

J. DERBY -- DIRECT BY MS. HODGE

1 located on the green rug.

2 Q Is it in substantially the same condition?

3 A Yes, I believe so.

4 Q So that's from a different caliber than these?

5 A That's correct.

6 MS. HODGE: I'm asking to admit State's No. 52.

7 MR. JOHNSTON: No objection.

8 THE COURT: Okay.

9 (STATE'S EXHIBIT NO. 52 RECEIVED INTO EVIDENCE.)

10 BY MS. HODGE:

11 Q Did you attempt to determine any type of
12 directionality of shots that could have been possibly
13 fired where one person had been standing in relation to
14 another one or anything along those lines?

15 A Yes, I did.

16 Q Okay. How did you go about doing that? What
17 did you do?

18 A To determine kind of flight path or angling of
19 a projectile, we use trajectory rods, which those are
20 inserted into holes. You have to have a conversion
21 point, meaning that if you have a wall with a hole in
22 it, you have to have another point to be able to
23 determine the angle actually -- where it actually ended
24 up striking another object.

25 Q Did you come to any conclusions regarding that?

J. DERBY -- DIRECT BY MS. HODGE

1 A We -- I was able to insert a trajectory rod
2 into the black trash can, trash bag in the corner of --
3 with the washing machine. Later, that -- it was
4 determined, to keep on traveling towards the mop handle
5 in the corner of the kitchen.

6 Q Were you able to determine from the corner of
7 the kitchen through the trash bag, to where that would
8 have continued on out?

9 A In the angle where it was going, yes. It was
10 going towards the actual wall where that projectile
11 hole and that fabric mark was on the actual kitchen
12 wall, in that general area.

13 Q And how about the one, the projectile hole at
14 the kitchen sink, the cabinet there, in relation to the
15 hole in the wall of the kitchen?

16 A I was not able to insert a rod in there at the
17 time. That projectile hole was made and actually
18 closed back up. I didn't try to force anything into
19 that hole.

20 Q Did you collect that portion of the wall that
21 had the hole in it?

22 A Yes, I did.

23 Q And why did you think that was important?

24 A Due to the items that were on the outside of
25 the wall, the suspected blood that we observed on

J. DERBY -- DIRECT BY MS. HODGE

1 there, fabric on there as well, to get DNA off that
2 wall section.

3 Q I'm going to show you State's No. 53, and tell
4 us what that is please.

5 A This is actually a packaging box that we use to
6 package larger items. It is documented on the outside,
7 the same as the other ones, this one indicating JD-G,
8 which is a section of wall from kitchen, containing
9 suspected projectile holes, suspected fabric and
10 suspected body tissue.

11 Q If you would, open that up and let me know if
12 that's in substantially the same condition.

13 A It's wrapped with the paper.

14 Q Was that from another agency?

15 A That's correct. This is not -- mine was here
16 at the bottom of the box with tape on the corners.

17 Q Now, there are some markings on here. Did you
18 make the pen markings on this item?

19 A No, I did not.

20 Q Other than those pen markings, is that in
21 substantially the same condition?

22 A The wall section, yes. It's obviously
23 deteriorated over time, the actual substance now -- the
24 coloring of it.

25 Q And how about -- you stated there was

J. DERBY -- DIRECT BY MS. HODGE

1 something -- suspected fabric, is that on here any
2 more?

3 A It appears to be a small possible trace of it.
4 The item was actually next to the projectile hole. The
5 majority of it is not there.

6 Q Did you do any testing on this piece of
7 evidence?

8 A No, I did not.

9 Q And would that be something that would go to
10 SLED?

11 A That's correct.

12 Q For the testing?

13 A That's correct.

14 MS. HODGE: At this time, we would move to admit
15 State's No. 53.

16 MR. JOHNSTON: Without objection.

17 THE COURT: Okay.

18 (STATE'S EXHIBIT NO. 53 RECEIVED INTO EVIDENCE.)

19 MS. HODGE: If you would please hold that up for
20 the jury can see. Front and back as well.

21 THE WITNESS: This is the front section. And the
22 back section and the interior of the wall.

23 BY MS. HODGE:

24 Q Okay. All right. Is that same section of wall
25 that is shown in State's No. 39?

J. DERBY -- DIRECT BY MS. HODGE

1 A Yes, it is.

2 Q After you collected the items that we have just
3 gone through at the scene and done your photographs, is
4 there anything else that you do at the scene?

5 A Also look for potential latent fingerprints, to
6 process items on the scene that we feel might have been
7 touched or handled by individuals inside the house.

8 Q And what's the difference -- when you say a
9 latent fingerprint, what does that mean?

10 A It's a fingerprint -- a recording of the inner
11 side of the hand or the finger that is left there by
12 chance.

13 Q And does it automatically mean if I touch this,
14 I've just left my fingerprints on that?

15 A Not necessarily.

16 Q And why is that?

17 A There's a lot of variables that play into the
18 possibility of an actual recording of the inner side of
19 the finger. Depending on how -- if a person sweats a
20 lot, or doesn't sweat, the condition of the item you're
21 touching, the way you touch it, and weather conditions.
22 it's also a possibility that a person was wearing
23 gloves at the time, that touch would not leave a
24 fingerprint behind.

25 Q And are there different -- is it possible to

D.D. SHAW -- DIRECT BY MS. HODGE

1 -- each canister is labeled. One is left palm, left
2 back, right palm and right back. So you do those four.

3 And then there is a second test, which is the
4 atomic absorption, where you use a Q-tip with nitric
5 acid and water and actually swab the same areas of the
6 hands.

7 Q And do you know what time it was when you did
8 the gunshot residue test on Ms. Edwards?

9 A I believe it was about five minutes to 7:00.

10 Q AM or PM?

11 A AM.

12 Q And do you know what time the incident -- the
13 shooting incident actually occurred?

14 A No, ma'am, I don't.

15 Q And did you package -- how did -- what do you
16 do with the cadavers and swabs and all that kind of
17 stuff?

18 A We have to fill out a sheet that indicates what
19 the -- why the test was being conducted, who it was
20 conducted on, and that all gets enclosed into a card
21 board box. And it's sealed and then put into property
22 and evidence.

23 Q Did you do that with this kit on Ms. Edwards?

24 A Yes, I did.

25 Q And are you responsible for testing the

D. SHAW -- DIRECT BY MS. HODGE

1 contents of the kit or do you leave it in property and
2 evidence?

3 A It goes to property and evidence. I collect it
4 only.

5 Q Who would process a gunshot residue kit?

6 A Normally SLED.

7 Q Was that all that you did on the night of the
8 shooting, on July 27, 2009 -- or excuse me -- the early
9 morning hours of July 27, 2009?

10 A Yes.

11 Q What was your next involvement in this case?

12 A I was contacted by Investigator Miller with the
13 Sheriff's Office, and he asked if somebody would be
14 available to respond back out to an address on Memorial
15 Drive Extension in regards to a shooting incident that
16 happened a few days prior.

17 Q Do you recall what day it was that you went
18 back out to the scene or that incident location?

19 A The 31st of July.

20 Q And what exactly were you out there to do, do
21 you remember?

22 A I told them that I would go out with him to see
23 if I could find any other potential evidence or
24 possibly try to determine where shots had been fired
25 from in regards to the shooting incident.

D. SHAW -- DIRECT BY MS. HODGE

1 Q And when -- when did you go there? I'm sorry.

2 A I believe it was about 9:00 in the morning on
3 the 31st.

4 Q Was anyone else out there at that time?

5 A The owner of the property, I think it was Mr.
6 Wooten was the name given, he owned the residence and
7 he was there. He had a key to allow us in.

8 Q Did you bring any items of evidence with you
9 that had been previously collected?

10 A Yes, I did.

11 Q And what was that and tell us why you did that?

12 A There was a small section of wall that had --
13 appeared to be a projectile hole in it. And also it
14 looked like it had tissue. I'm talking -- when I say
15 "tissue", I'm talking skin. I had taken that out to
16 try to assist with trying to determine if there was a
17 projectile that had not been recovered from that part
18 of the wall, so I needed to put it back in place so I
19 can try to determine which direction it was traveling.

20 Q Okay. While she's working on those, let me
21 show you State's No. 53; is this the item you are
22 referring to, that you took back...?

23 A Yes, it is.

24 Q And at that time, did you remove it from the
25 box in the packaging?

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D. SHAW -- DIRECT BY MS. HODGE

1 A I did. It wasn't at that time, it was a short
2 time later because I was shown some -- where there was
3 some projectile holes, one was like under a sink in the
4 wood. There was also another projectile hole near the
5 back door, down towards the corner. And before I put
6 that in, I tried to determine the path the projectile
7 would have taken from the hole in the wall where that
8 would have -- that bullet may have come from.

9 Q And were you able to make some conclusions
10 regarding that?

11 A Yes.

12 Q All right. And what did you conclude?

13 A Inserting a trajectory rod into the hole in
14 the -- in the bottom of the wall, I had a laser
15 attachment that shoots a red beam, as any laser --
16 laser does. And it pointed back into an area where
17 this section of wall had been taken out of.

18 Q All right. Were you able to determine a -- a
19 path or an angle?

20 A From there, I didn't -- I didn't try to
21 determine the -- an angle. I was interested in the
22 path that that projectile would have taken to see if it
23 would -- could have come from the living room or where
24 that particular projectile would have originated from.

25 Q So you're saying it came from the general area

D. SHAW -- DIRECT BY MS. HODGE

1 of the sink to the wall --

2 MR. JOHNSTON: Object to the leading, Your Honor.

3 THE COURT: Don't lead.

4 BY MS. HODGE:

5 Q Could you restate that for me?

6 A Where this section was taken from the wall,
7 it's at the opposite end of the kitchen is where the
8 projectile was at. When I followed the trajectory from
9 the hole in the corner, it originated back to the wall,
10 not where the sink was at, but the wall farther back
11 where this section was cut out from -- and my
12 understanding was where the suspect was standing.

13 Q And is -- I'm showing you State's No. 12, is
14 this the area that you're speaking of, the sink area?

15 A That is the sink area, but that's not the
16 location of where the trajectory path was to. It was
17 actually to the opposite wall across from the sink.

18 Q On this side?

19 A On this side.

20 Q Oh, this side. I apologize. All right. Had
21 you -- you said you used a trajectory rod, I'm going to
22 show you State's No. 59, is that what you're speaking
23 of?

24 A Yes. That's a trajectory rod. It's just a
25 nylon rod that is a straight -- it gives you a straight

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D. SHAW -- DIRECT BY MS. HODGE

1 line. And then you can screw an attachment on the end
2 that has a laser pointer, which then would project the
3 distance. If it was a straight -- a straight angle, it
4 would go straight out from the end of the trajectory
5 rod, out to where it would impact on the wall.

6 Q Did you then take photographs of the placement
7 of the trajectory rod?

8 A Yes, I did.

9 Q And is that a photograph also that you took --
10 I'm showing you State's No. 61?

11 A This is a photograph that I took, yes.

12 Q Okay. And are those true and accurate
13 representations of what you were observing at the time,
14 the projectile holes in those two areas?

15 A The only exception is with the laser dot, this
16 dot coincided with the hole in the wall, not the one
17 from the sink.

18 Q Let me show you State's No. 60.

19 A That's correct.

20 Q That's it. All right.

21 A Yes, ma'am.

22 Q So when you say the "hole in the wall", tell
23 the jury where is the hole in the wall?

24 A If I -- if my back is towards the solid wall,
25 directly in front of me would be the sink, over to the

D. SHAW -- DIRECT BY MS. HODGE

1 left was the door that entered out the back of the
2 house. On the bottom corner, by the rear door, is
3 where the hole was at that I found.

4 Q I'm going to show you what's State's No. 16.
5 And where is the hole that you're speaking of?

6 A This hole is actually behind the door. If the
7 door were closed, it would be in the corner behind that
8 door.

9 MS. HODGE: Okay. I move to admit State's No. 61
10 and 60.

11 MR. JOHNSTON: Without objection.

12 THE COURT: Okay.

13 (STATE'S EXHIBITS NOS. 60 AND 61 RECEIVED INTO
14 EVIDENCE.)

15 BY MS. HODGE:

16 Q Let's look at State's No. 59, did you take that
17 photograph?

18 A Yes, I did.

19 Q Okay. And where did that laser pointer show
20 up? Where does that laser line follow through to show

21 A It was -- it was in the same -- the same area
22 as the hole in the back wall there. From my
23 understanding from investigator Miller, where the
24 suspect was standing.

25 Q Was that where this piece of wall also had b

D. SHAW -- DIRECT BY MS. HODGE

1 removed from that general vicinity?

2 A That's correct.

3 MS. HODGE: We move to admit State's No. 59.

4 MR. JOHNSTON: Without objection.

5 THE COURT: All right.

6 (STATE'S EXHIBIT NO. 59 RECEIVED INTO EVIDENCE.)

7 BY MS. HODGE:

8 Q Did you find any other evidence of projectiles
9 or anything of the sort and collect those at this time?

10 A Yes, I did.

11 Q Okay. Tell us about that.

12 A Where -- where that small section of wall had
13 been taken out, it was -- it was too small of an area
14 to try to find a projectile behind it. So I cut out a
15 larger area of the wall behind that. Behind that wall
16 was a black fiber board. And I started breaking pieces
17 of that black fiber board away, and I found a
18 projectile down inside, between the black fiber board
19 and a brick wall, which separated the bathroom from the
20 kitchen.

21 Q All right. Let me show you State's No. 55, 56
22 and 57; what are those?

23 A These are photographs that I took, one is after
24 I had cut the larger sections of -- of the wall out.
25 One of other photographs is a distance photograph. It

D. SHAW -- DIRECT BY MS. HODGE

1 was -- looked like a lead swipe on the brick wall,
2 which is on the inside, which would have been impacted
3 by a projectile.

4 And the third picture is just a larger
5 photograph showing the lead swipe, where a projectile
6 impacted on the -- on the brick.

7 Q And are those true and accurate representations
8 of how that wall looked when you went out there to
9 remove that piece?

10 A Once I removed the piece, yes.

11 MS. HODGE: Okay. At this time, we would move to
12 admit State's No. 55, 56 and 57.

13 MR. JOHNSTON: Without objection.

14 THE COURT: All right.

15 (STATE'S EXHIBITS NOS. 55, 56 AND 57 RECEIVED INTO
16 EVIDENCE.)

17 BY MS. HODGE:

18 Q I show you State's No. 58, did you actually
19 find a projectile down at bottom of that area?

20 A Yes, I did.

21 Q And what is State's 58?

22 A That's a photograph of the projectile that I
23 found behind the black fiber board, between the board
24 and a brick wall.

25 Q And did you then collect that item?

D. SHAW -- DIRECT BY MS. HODGE

1 A Yes, I did.

2 Q I show you what's marked as State's No. 64;
3 what is that?

4 A This is a coin envelope that is denoted DLS-2,
5 which are my initials, and item number two. It has a
6 time on it. And also it indicates it's a lead
7 projectile from the kitchen wall.

8 Q If you would, if you could open that up for me.
9 And is that what you collected?

10 A I'm going to say that it is because it's in the
11 packaging that I put it in.

12 Q Is it -- did you take a photograph of it also?

13 A I did.

14 Q Is it in substantially the same condition?

15 A It appears to be, yes.

16 MS. HODGE: At this time, we would move to admit
17 State's No. 58 and 64.

18 MR. JOHNSTON: No objection.

19 THE COURT: All right.

20 (STATE'S EXHIBIT NO. 58 AND 64 RECEIVED INTO
21 EVIDENCE.)

22 BY MS. HODGE:

23 Q If you would hold that up for me. Can you tell
24 us a little bit about projectiles? What does that
25 mean? Maybe normal people call it bullets, but that

D. SHAW -- DIRECT BY MS. HODGE

1 might not be accurate.

2 A In layman's terms, if you have an unfired --
3 because some people call it bullets, I call it a
4 cartridge. It's been unfired. It's a cartridge. The
5 lead point that gets shot out is considered a
6 projectile.

7 It may -- it may just have lead on it. It may
8 be jacketed with a copper jacket, but that is the
9 projectile that gets -- that gets shot out from the
10 gunpowder once -- once it has been fired. And then
11 what's left over is the casing.

12 So you have a have cartridge when it's intact,
13 before it is fired. A shell casing, which is after the
14 projectile is gone. And then you'll have the
15 projectile, which can be lead and/or could have a
16 jacket of some sort on it unless it separates.

17 Q Did you find another projectile when you went
18 back out to this house?

19 A Yes, I did.

20 Q Tell us about that.

21 A When I -- the hole that was behind the side
22 door, the back door, I went around inside the house and
23 I saw where it appeared that that hole, that I believed
24 to be a projectile hole, went through the kitchen --
25 the back of the kitchen wall and went into a bathroom,

D. SHAW -- DIRECT BY MS. HODGE

1 which was off of the master bedroom.

2 And I -- when I got down behind the toilet, I
3 could see where the projectile had actually come
4 through the bathroom wall and penetrated the side wall
5 of the bathroom next to the toilet.

6 Q Did you then collect that item, that
7 projectile?

8 A Yes, I did.

9 Q I'm showing you State's 62 and 63, did you take
10 those photographs?

11 A Yes, I did.

12 Q What is 62?

13 A That is a photograph of the projectile that I
14 actually collected, from out of the side wall in the
15 bathroom.

16 Q And what is 63?

17 A It is a photograph showing where the projectile
18 came through the wall, behind the toilet, and is
19 actually the hole that I cut out. It was the damage
20 that I caused when I cut the hole out to retrieve the
21 projectile.

22 MS. HODGE: We move to admit State's Exhibit No.
23 62 and 63.

24 MR. JOHNSTON: Without objection.

25 THE COURT: All right.

V. GIBSON -- DIRECT BY MS. HODGE

1 Q Sixty-seven. Thank you.

2 A And this was item 2, so this is item 2.1, it's
3 labeled. It's the coin envelope that that cutting went
4 into.

5 Q Can you open it and let's verify that's
6 actually in there. I need you to do that also with
7 number 63.

8 A Yes, ma'am.

9 Q All right. Would that be in substantially the
10 same condition as when you took the cutting from the
11 blanket?

12 A It is very close. The DNA analyst, it appears
13 she took a very small section of the same.

14 Q How about from 66 as well?

15 A Yes, ma'am.

16 Q All right.

17 MS. HODGE: At this time, we move to admit 66 and
18 67.

19 MR. JOHNSTON: Without objection.

20 THE COURT: Okay.

21 (STATES'S EXHIBIT NOS. 66 and 67 received into
22 evidence.)

23 MR. JOHNSTON: No objection.

24 BY MS. HODGE:

25 Q Were you asked to examine any other items of

V. GIBSON -- DIRECT BY MS. HODGE

1 evidence under this lab number, this case number?

2 A Yes, I was.

3 Q What was that?

4 A It is our item number seven, a section of wall.

5 Q All right. I think what has now been marked
6 State's No. 53; see if you can identify this.

7 A Yes, ma'am. This is a section of the wall that
8 I processed.

9 Q Okay. What did you do with that?

10 A The request was for blood and DNA, other, which
11 usually means hair. So I swabbed the area that is
12 circled and tested it for the presumptive presence for
13 blood. There was one possible hair that I collected.
14 And there was, what appeared to be fibers, that I
15 collected.

16 Q And do you mind holding that up and showing
17 what markings are on there. Who made those markings?

18 A I made these markings. This is where I labeled
19 the item. This is the area that I tested with a
20 presumptive test for blood. This is where the hair --
21 the possible hair came from. And this right here is
22 where the possible fibers came from.

23 Q And how do you take off the possible hair and
24 fibers; what do you do?

25 A We clean tweezers with alcohol, dry that off.

V. GIBSON -- DIRECT BY MS. HODGE

1 And then physically pluck it off the background.

2 Q Do you know what the other material on this
3 board might be? Did you do any testing for that?

4 A The other material?

5 Q The yellowish?

6 A No, ma'am.

7 Q Okay. And your presumptive test on this one?

8 A Was negative.

9 Q Was negative for blood. Okay. I'm showing you
10 State's No. 68. What is that? And you may need a pair
11 of scissors.

12 A I can -- unless you want to --

13 Q No. You can do that.

14 A This is the coin envelope that I sealed the
15 possible fibers into.

16 Q All right.

17 A It's item number 7.1 because it came off our
18 item 7.

19 Q All right. What about State's No. 69.

20 A This is item 7.2. This is the possible hair I
21 collected off a section of wall.

22 Q Where would State's No. 68 have gone after you
23 collected it and made it 7.1?

24 A To our Trace Department.

25 Q And let's open this one up too. Do you have

1 have your markings on that as well?

2 A I do, yes, ma'am. My initials and the date
3 that I sealed it are on the back, as well as where I
4 filled out the front of it.

5 Q And how about this one?

6 A Yes, ma'am. My initials and the date again.

7 Q Okay. Great. Thank you. Were you asked to
8 examine any other items of evidence in this case?

9 A No, ma'am.

10 MS. HODGE: Please answer any of the defense's
11 questions.

12 MR. JOHNSTON: I have no questions for the lady.

13 THE COURT: All right. Thank you, ma'am. You may
14 stand down. Any reason not to release her from
15 subpoena?

16 MR. JOHNSTON: Not from the defense.

17 THE COURT: Okay. You are free to go, ma'am.

18 MS. HODGE: The State calls Ila Simmons.

19 THE COURT: Okay.

20 THE CLERK: Ma'am, please place your left hand on
21 the Bible and raise your right hand.

22 ILA SIMMONS, having been
23 first duly sworn, testified as follows:

24 THE CLERK: Thank you. Please be seated. State
25 your name for the record.

LEA SIMMONS -- DIRECT BY MS. HODGE

1 Q And what -- when you received that kit, do you
2 know what date you received that kit?

3 A If I may consult this.

4 Q Sure.

5 A Yes, ma'am. I received it on February 24th of
6 this year.

7 Q And was it sealed when you received it?

8 A Yes, ma'am, it was.

9 Q And tell us what you did with that item of
10 evidence?

11 A I checked to make sure that it was under proper
12 seal. After that, I took the kit out and made sure
13 that all the components were present. After completing
14 that, I processed it and prepared it for analysis and
15 analyzed it.

16 Q And is there a name that is associated with
17 that gunshot residue kit?

18 A Yes, ma'am.

19 Q What is that?

20 A It was labeled as being collected from Rikki
21 Danielle Edwards.

22 Q Is there anything left in this packaging?

23 A Yes, ma'am, there is.

24 Q Okay. If you wouldn't mind opening that up for
25 me.

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ILA SIMMONS -- DIRECT BY MS. HODGE

1 And the date and time of the incident was
2 approximately 2:00 a.m. on July 27th of 2009. And the
3 GSR kit was collected at about 4:30 a.m.

4 Q According to that paperwork?

5 A Yes, ma'am. According to this paperwork.

6 Q And is there an officer's name?

7 A Yes, ma'am.

8 Q Associated with that?

9 A Yes, ma'am.

10 Q Who is that?

11 A It would be D.L. Shaw.

12 Q And what conclusions, if any, did you reach
13 regarding the gunshot residue kit?

14 A The quantity of the metals that we found, the
15 lead, barium and antimony did not indicate the presence
16 of gunshot residue.

17 Q Okay. Did you also have the opportunity to
18 examine another item of evidence in this case?

19 A Yes, ma'am.

20 Q And it's now been marked as State's No. 68;
21 what is that?

22 A It was a small piece of debris, that had fibers
23 attached to it.

24 Q And do you know where that originated from?

25 A I believe it was cut from a section of wall.

A. HEFNEY -- DIRECT BY MS. HODGE

1 Q Okay. You all won't even accept a GSR sample
2 where the time of the alleged incident is more than six
3 hours from the time that the sampling standard --

4 A If it is on a living individual, yes, sir.

5 Q If it's on a living individual?

6 A Yes, sir.

7 Q Okay. There's a -- the simple washing of hands
8 under running water would remove all elements?

9 A Yes, it can.

10 Q Putting your hands in your pants, that could
11 remove some of the materials as well, couldn't it?

12 A Yes, sir, it can.

13 Q And as we talked earlier, there is a natural
14 dissipation?

15 A Yes, sir, over time.

16 Q Over time.

17 MR. JOHNSTON: Please answer any other questions.

18 MS. HODGE: I have got no further questions for
19 this witness.

20 THE COURT: All right. Thank you. If there is no
21 no objection, you are released from subpoena.

22 MR. JOHNSTON: There is none.

23 MS. HODGE: The State calls Adrian Hefney.

24 THE CLERK: Please come forward. I'll let you set
25 your things down and then please place your left hand

1 on the Bible and raise your right hand.

2 ADRIAN HEFNEY, having been
3 first duly sworn, testified as follows:

4 THE CLERK: Please state your name for the record.

5 THE WITNESS: Adrian Hefney Wylie H-e-f-n-e-y.

6 DIRECT EXAMINATION BY MS. HODGE:

7 Q Ms. Hefney, who are you employed by?

8 A With the South Carolina Law Enforcement
9 Division, more commonly known as SLED.

10 Q And how long have you been with SLED?

11 A November will be about 15 years.

12 Q What are your current duties with SLED?

13 A I'm a forensics DNA analyst with SLED.

14 Q Did you have any other jobs with the SLED prior
15 to doing that?

16 A I was a forensics technician for the first year
17 and a half that I joined SLED.

18 Q Okay.

19 A But I have been a forensics DNA analyst since.

20 Q What is your educational background and what
21 type of training do you have to be a DNA analyst?

22 A I have Bachelor of Science degree from the
23 University of South Carolina in Biology. I have taken
24 post graduate courses in the field of genetics,
25 molecular biology and population statistics.

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A. HEFNEY -- DIRECT BY MS. HODGE

1 I have a MDA Degree from Winthrop University as
2 well. And I have continued to have continuing
3 education courses each year, where we must attend a
4 conference or a training to stay abreast of any changes
5 in the field of DNA analysis.

6 Q And how many cases involving DNA profiling have
7 you worked over your years?

8 A I would say it's in the thousands.

9 Q Can you tell us a little bit about DNA and then
10 a little about serology also?

11 A Sure. I'll start with serology because that's
12 where our DNA analysis starts pretty much. Serology is
13 a scientific body fluid identification. It's where you
14 see if you're working with blood or semen or saliva.

15 And once you determine whether you have those items or
16 have those substances, then you move on towards DNA.

17 Now what DNA is, it stands for Deoxyribonucleic
18 acid. It's a chemical substance that is found in all
19 nucleated cells of our body. And we are -- the DNA
20 that we have is passed down from our parents. We get
21 half of it from our mother and half of it from our
22 father.

23 Now, as humans, we all have a lot of the same
24 DNA. The DNA that comes from us to be human, gave us
25 two arms and two legs and eyes and ears and a mouth,

A. HEFNEY -- DIRECT BY MS. HODGE

1 nose. But, of course, if you look around this
2 courtroom, you notice that everybody looks different.
3 So everybody's DNA is different. No two people will
4 have the same DNA profile with the exception of
5 identical twins.

6 And we use that in forensics to make comparisons
7 between unknowns, which are items that were left behind
8 at a crime scene, and knowns which are items come from
9 the people involved or said to be involved in the
10 crime -- the victim and the subject.

11 Q And have you been qualified to testify as an
12 expert in relation to serology and DNA analysis in the
13 past?

14 A Yes, ma'am, I have.

15 Q How many times?

16 A Approximately about 55 or 56 times now.

17 MS. HODGE: At this time, we would move to admit
18 her as an expert in DNA analysis and serology.

19 MR. JOHNSTON: Your Honor, we believe she is
20 qualified to offer her opinion.

21 THE COURT: Without objection.

22 BY MS. HODGE:

23 Q Ms. Hefney, on August 3rd, did you -- of 2009,
24 did you receive an item -- in this case State vs.
25 Swofford -- for you to test for either serology or DNA

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A. HEFNEY -- DIRECT BY MS. HODGE

1 analysis?

2 A Yes, ma'am. I did receive these items and it
3 is noted by my initials and the date on the package,
4 the container.

5 Q And was it sealed, that item sealed when you
6 received it?

7 A Yes, ma'am.

8 Q Can you tell us a little bit about when
9 something comes into SLED, what is the process that
10 this item would have been taken from my investigating
11 officer to you?

12 A Okay. From -- your investigating officer will
13 bring it to SLED. It is locked in our Evidence Control
14 Unit. A request is put on it, whatever type
15 request they need -- in this case, it was DNA analysis
16 needed. So they put a DNA request on it.

17 From there, our technician or either I will go
18 downstairs and retrieve it from the Evidence Control
19 Department, and bring it up to the lab to begin work on
20 it.

21 The first thing I will note is to see what items
22 we have, compare it to what was logged it on the log-in
23 sheet. Make sure each item was sealed. And they are
24 usually sealed in this heat sealed pouch with the
25 initials of the submitting officer, as well as my

A. HEFNEY -- DIRECT BY MS. HODGE

1 initials when I'm done.

2 Q Okay. And do you know where -- what the swab
3 was from? What was swabbed?

4 A This -- the -- the description on the box and
5 the Item D.1, which will be Greenville County's item
6 number, swab of suspected blood tissue from item JD-E.

7 Q All right. And can you tell me what you did
8 with that item please, State's No. 54?

9 A With that item, I was able to take it straight
10 to DNA analysis. I did not see any appreciable stains
11 on it. I didn't want to do a serology test and risk
12 not having enough to do a DNA -- DNA analysis on it.

13 So on this particular item, which is our item
14 one, I went straight to DNA. And I later found --
15 would you like me to read the results of what I found?

16 Q Were you able to develop a DNA profile off of
17 that?

18 A Yes, ma'am, I was.

19 Q And did you make a preliminary match to anyone
20 off that DNA profile?

21 A Not initially. When I was able to get a
22 standard, a known standard to compare it to, I did -- I
23 was able to make a match, DNA match.

24 Q I show you -- I give it to you. I can't get a
25 number. State's No. 71, can you tell me what that is?

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A. HEFNEY -- DIRECT BY MS. HODGE

1 A It's marked "known standard". This is -- was
2 from a buccal swab. And a buccal swab is just a swab
3 from the inside of someone's cheek.

4 Q And do you know whose buccal swab it is? Does
5 it say?

6 A It does not say, but I'll compare it to what I
7 have.

8 Q Sure.

9 A And this will be buccal swab from Ronnie
10 Swofford, Jr.

11 Q What do you do with the buccal swabs?

12 A The buccal swabs, I make a comparison to the
13 unknown items of evidence that we have, that were
14 collected from the crime scene, to see if it matched
15 anyone, the victim or the subject in this case.

16 And in this case, I determined that the swab of
17 suspected blood tissue from the kitchen floor, which is
18 our item number one, matches the DNA profile of Ronnie
19 Swofford, Jr.

20 And when we have a visual match, we also apply a
21 statistical match to it. And it just gives, I guess,
22 weight to the sampling. It's just a further way of us
23 saying that we have a match. We apply a statistic to
24 it.

25 And in this case, the probability of randomly

A. HEFNEY -- DIRECT BY MS. HODGE

1 selecting a unrelated individual, having a DNA profile
2 matching this item, is approximately one in 24
3 quadrillion.

4 Q Do you know what the earth's current population
5 is?

6 A Roughly about 7 billion. So this is about a
7 million -- roughly about 3 million and some change,
8 times -- a million times our earth's population.

9 Q Are these in substantially the same condition
10 as when you would have taken them and analyzed them?

11 A Yes.

12 MS. HODGE: At this time, we move to admit State's
13 No. -- State's No. 71.

14 MR. JOHNSTON: Without objection.

15 THE COURT: Okay.

16 (STATE'S EXHIBIT NO. 71 RECEIVED INTO EVIDENCE.)

17 BY MS. HODGE:

18 Q Did you have an occasion to examine some
19 cuttings, that were described as 2.1 and 3.1, as your
20 item number?

21 A Yes. They were obtained from a yellow gingham
22 print table cloth. That was item 2.1. Item 3.1 was a
23 cutting from a beige material blanket.

24 Q I'm going to show what's has been labeled as
25 State's No. 72. Are you familiar with this item?

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A. HEFNEY -- DIRECT BY MS. HODGE

1 A This was the standard from Mr. Wooten.

2 Q All right. Would you say that a little bit
3 louder?

4 A This is the standard from Curtis Wooten, who is
5 the victim in this case.

6 Q The same type of buccal swab?

7 A Yes.

8 MR. JOHNSTON: Without objection.

9 THE COURT: All right.

10 (STATE'S EXHIBIT NO. 72 RECEIVED INTO EVIDENCE.)

11 BY MS. HODGE:

12 Q Did -- could you compare State's No. 72?

13 A There is nothing in this envelope.

14 Q It was this.

15 A Okay.

16 Q State's No. 72, the buccal swabs of Curtis
17 Wooten, did you compare those to the cutting from the
18 Gingham cloth and from the blanket?

19 A Yes, ma'am, I did.

20 Q What were your results?

21 A The DNA profile developed from items 2.1 and
22 3.1 is consistent with the DNA profile of Curtis
23 Randolph Wooten.

24 Q And so -- did you determine those to be blood
25 on the blanket --

A. HEFNEY -- DIRECT BY MS. HODGE

1 A Yes, ma'am -- I'm sorry -- I did. It was blood
2 indicated on both items, the cutting from the yellow
3 Gingham table cloth, as well as the beige material
4 blanket.

5 Q And you finally have an opportunity to examine
6 one other item of evidence in this case, your 7.2.

7 A Yes, ma'am.

8 Q Okay. And what was 7.2, SLED 7.2?

9 A Item 7.2 was a possible hair collected from a
10 section of wall.

11 Q And is that State's No. 69 now?

12 A Yes.

13 Q And is there anything in that envelope that you
14 --

15 A What's remaining in this envelope is the hair
16 shaft, because we get DNA from the root of the hair.
17 So what I did, I sliced the hair and put the root to do
18 the DNA analysis on, and saved the shaft in case
19 further analysis is needed at another time. So my item
20 number indicates 7.2.1.

21 Q Is that what's inside there?

22 A Yes, inside.

23 Q All right.

24 MS. HODGE: At this time, we would move to admit
25 State's No. 69.

A. HEFNEY -- DIRECT BY MS. HODGE

1 MR. JOHNSTON: Without objection.

2 (STATE'S EXHIBIT No. 69 RECEIVED INTO EVIDENCE.)

3 BY MS. HODGE:

4 Q And what results, if any, did you come to
5 regarding the item -- the hair that was removed from
6 the section of the wall?

7 A I'm going to read directly from my report, "the
8 DNA profile developed from item 7.2.1, matches the DNA
9 profile of Ronnie Swofford, Jr. The probability of
10 randomly selecting an unrelated individual having a DNA
11 profile matching this item is approximately 1 in 24
12 quadrillion".

13 Q And did you extract that DNA just from the root
14 of the hair or is there some other material that is
15 contained in it?

16 A There was tissue associated with those hair
17 roots. It was intermingled with them -- the hair was
18 intermingled with those tissues, so that's probably
19 where the majority of the DNA came from, between the
20 root as well as that associated tissue.

21 Q Did that conclude your involvement in this
22 case?

23 A Yes, ma'am, it did.

24 MS. HODGE: Thank you. Please answer any of
25 defense's questions.

A. HEFNEY -- CROSS BY MR. JOHNSTON

1 CROSS EXAMINATION BY MR. JOHNSTON:

2 Q I'm curious, ma'am, you gave a very precise
3 quantification regarding the probability of selecting
4 someone else with exactly the same DNA as from those
5 tissues, as to the suspect analysis?

6 A Yes, sir.

7 Q Yet you gave a very general statement that as
8 far as the victim -- comparison with the victim's blood
9 is concerned, and it being consistent, which seems
10 awfully general, why?

11 A Well, when we have items that are known to come
12 from the victim, such as any clothing they are wearing,
13 any items that's in their house or items that may have
14 been around them or somewhere in the vicinity of where
15 the body was laying, that they are known to have blood
16 from, we sometimes say consistent with instead of
17 applying a statistic to it. Because in that case, it
18 is considered less probative, I guess, than any other
19 items found in the house.

20 For example, if it was a shirt that someone was
21 wearing when they were shot or stabbed, we would not
22 typically say it matches the victim and apply a
23 statistical match to it. We would just say it is
24 consistent with the victim because that is expected to
25 be there.

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A. HEFNEY -- CROSS BY MR. JOHNSTON

1 Q Less importance -- therefore, you conduct a
2 less strict analysis?

3 A No. The analysis was exactly the same, but --

4 Q Some evidence --

5 A But statistical weight, I guess, or the
6 statistical -- we didn't apply a statistics to it
7 because it was expected.

8 MR. JOHNSTON: Please answer other questions.

9 MS. HODGE: I don't have any further questions.

10 THE COURT: All right. You may step down, ma'am.
11 If there is no objection, you are released from
12 subpoena.

13 MR. JOHNSTON: No objection, Your Honor.

14 MS. HODGE: Your Honor, we would have a matter of
15 law that has to be decided prior to the next witness.

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen of the jury, I'm going to -- probably not a
18 bad time for a little break. We have got to take care
19 of an issue outside your presence. We'll get you back
20 just quickly as we can. Thank you.

21 (Whereupon, the jury left the courtroom at
22 3:07 p.m.)

23 THE COURT: Okay. Your Honor, we would need to do
24 a Jackson V. Denno at this time. Investigator Miller
25 is here and he's feeling so much better I'm sure. He's

G. MILLER -- DIRECT BY MS. HODGE

1 And then get with hospital personnel to make sure it
2 would be okay for me to take DNA buccal swabs from the
3 victim, since he was intubated at the time.

4 So I spoke with the nursing supervisor -- and I
5 don't have her name in front of me. But I -- Lydia
6 Leech -- Lydia Leech. She said it would be okay
7 because it's not intrusive. So I went there. I
8 executed a search warrant. I took a buccal swab myself
9 and sealed them back up in the proper containers that
10 were given by SLED. And I took them back to SLED.

11 Q What was the condition of the victim at the
12 time you took his buccal swab?

13 A He was on life support and he was intubated.

14 Q And let's go back a few days. Did you go -- on
15 July 30th or 31st, did you go back out to the incident
16 location, the residence, with another forensics
17 officer?

18 A Yes. Myself, Master Deputy Lewis and Sergeant
19 Shaw went back to the incident location. I tried to
20 get a better picture of what happened.

21 Q And were you present when they used trajectory
22 rods --

23 A Yes.

24 Q -- to determine the location of a shooter
25 vs. -- a person shooting, a person shot?

C. MILLER -- DIRECT BY MS. HODGE

1 get another warrant against the Defendant?

2 A Yes. It was after speaking with Mr. Wooten.

3 And --

4 Q What was that charge?

5 A That was for assault with intent to kill on
6 Ms. Edwards.

7 Q Is there any reason why you did not do that
8 with the initial group of warrants?

9 A Because of the -- at the time, as I explained
10 before, she was still a person of interest. And I was
11 only able to exclude her as a suspect in this after
12 speaking with Mr. Wooten.

13 Q Did you also have that assault with intent to
14 kill warrant served on the Defendant?

15 A Yes, I did.

16 Q Did you personally do that?

17 A No.

18 Q After obtaining that final -- was that the
19 final warrant, the assault in this case?

20 A Yes, ma'am.

21 Q What was your next step in this investigation
22 with regard to DNA analysis in the case?

23 A The next step was I received a court order to
24 obtain buccal swabs from Mr. Swofford. And I was able
25 to meet up with him on September 9, 2010. And I met

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C. MILLER -- DIRECT BY MS. HODGE

1 with him and collected two buccal swabs. And then,
2 again, placed them in the proper containers, which SLE
3 provides us, and then took them straight to P & E.
4 And -- where they were packaged and an analysis form
5 was filled out and given to the evidence tech.

6 Q Did you ask for any other items of evidence
7 from the crime scene to be sent down to SLED after thi
8 time?

9 A Yes. There was a piece of wall that was cut
10 out -- Sgt. Shaw and Master Deputy Lewis went back a
11 second time. That -- after looking at it, Sgt. Shaw,
12 you know, he wanted to cut this piece out and make sur
13 that we had everything that we could from the other
14 projectile. But when we first -- Sgt. Shaw and I firs
15 were looking at the items to send down, we just sent
16 one down, but we decided later when we wrote the repor
17 to go ahead and submit it as well.

18 Q That section of wall that you're referring to,
19 is -- is it State's No. 53; is that actually the --
20 collected by Derby?

21 A That's correct.

22 Q And you and Sergeant Shaw went later and got a
23 smaller portion?

24 A Yes.

25 Q State's No. 53 --

C. MILLER -- CROSS BY MR. JOHNSTON

1 A Yes, that was it.

2 Q All right. Did you also ask for any ballistic
3 testing to be done in this case?

4 A We did.

5 Q And who would do that?

6 A James Armstrong. This is what he does.

7 Q And all of these things were done after Mr.
8 Swofford had been arrested?

9 A That's correct.

10 Q Continuing an investigation?

11 A Yes.

12 Q Is there anything else that you did after that,
13 aside for preparing for trial?

14 A No, ma'am.

15 MS. HODGE: Thank you. Please answer any
16 questions of the defense.

17 THE COURT: All right.

18 CROSS EXAMINATION BY MR. JOHNSTON:

19 Q You wouldn't know when Ronnie Swofford's
20 birthday is, does your investigation show that?

21 A The records show that it was [REDACTED].

22 Q All right. And the incident date in question,
23 again, is what?

24 A July 27th.

25 Q July 27th.

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1 offer for -- offer an expert opinion in this situation.

2 THE COURT: Well, you -- you acknowledge that you
3 didn't have to be an expert to determine whether or not
4 it was fresh, so I'll let him to testify to that.

5 MR. JOHNSTON: All right, sir.

6 BY MS. HODGE:

7 Q In State's No. 39, the matter that you see as
8 suspected or possible blood, tissue, hair, does that
9 appear to be fresh blood, tissue, hair in your
10 experience?

11 A That would be fresh blood, the red.

12 Q I need you to say that in the microphone?

13 A The blood is red.

14 Q And what does that tell you that?

15 A That it is still fresh.

16 Q Tell the jury about the -- a little more
17 specifics about the day that you went out to -- or the
18 Defendant's residence when you spoke to Ms. Lawter; how
19 many cars showed up that day?

20 A When we got to Ms. Lawter's residence, what we
21 refer to as -- in the case, basically -- all we're
22 doing is going to a house, we're knocking on the door,
23 and seeing if somebody will talk to us. So Master
24 Deputy Will Lewis was training with me. So we were in
25 my vehicle. We contacted the Spartanburg County

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Ronnie C. Swofford, Jr. v State of South Carolina

Case Number 14-CP-23-3763

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Post-conviction relief Hearing of October 21, 2015

Testimony of Ronnie Swofford - Direct Examination

1 certain affidavit. That was her reasons for
2 denying me the motion.

3 I was going to appeal it. I dismissed it
4 after I thought about it and just went with
5 the PCR to handle this matter.

6 Q. Okay. So -- and we'll get to Terry
7 Stephens in a little bit, down the road. But
8 I want to go back to the trial and things
9 that you believe were done ineffective. And
10 I asked about the blood.

11 A. And the reason for that, okay, to
12 get about the blood. And that was -- the
13 thing about Mr. Stephens is I found about him
14 first. I didn't have my case file from Mr.
15 Johnston and Mr. Wilson at this time. I
16 didn't know what existed inside that file.
17 I'd never had access to my complete file
18 through them.

19 I was told on a couple of occasions if
20 they had the opportunity to sit down with me,
21 we could go through some stuff but that never
22 happened. The only times that we spoke about
23 my case file was when I could stop and we had
24 about thirty minutes to talk about some stuff
25 and that was relatively it.

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Testimony of Ronnie Swofford - Direct Examination

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1 However, once I received my case file in
2 February of 2013, I started discovering a lot
3 of Motions, reports and stuff in there that
4 I'd never saw, ever. And it really blew my
5 mind because Mr. Johnston received a report
6 from SLED from the solicitor's officer -- I'm
7 sorry, the solicitor's office from SLED --
8 about a section of the wall, which was Item
9 53 in the exhibits of the trial, the trial
10 transcript. It was the wall where they
11 received the information off of it. And
12 there had been some testing, some evidence,
13 blood and stuff.

14 And Mr. Johnston at that time put in for
15 a continuance for thirty days in April. They
16 granted the Motion.

17 So once we went to court, this time Mr.
18 Johnston knew that what that report said.
19 There was no blood indicated on the wall.

20 Q. Uh-huh.

21 A. And it was even testified to by Ms.
22 Gibson. Verona Gibson stated that when that
23 section of the wall was tested it was
24 negative for blood. And then Solicitor Hodge
25 repeated it. Negative for blood, okay. It

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1 was slid in there rather smooth because they
2 were talking about the victim in his blood on
3 some towel, a towel and a blanket. They went
4 right into the wall, referring to that
5 section of the wall that had the alleged
6 blood spatter on it. They went straight into
7 that. And they didn't refer to the suspect
8 because they was talking about the victim.

9 But when they said no blood indicated --
10 well, no -- negative for blood, she said,
11 okay. Mr. Johnston -- she made one more
12 comment and she asked Mr. Johnston did he
13 have any questions. He said 'I have no
14 questions for this witness.'

15 At that point I felt Mr. Johnston should
16 have -- that was an opportunity to hold item
17 39, the State's Exhibit 39 up which showed
18 the only red substance that appeared to be
19 blood and tell the jury that this was not
20 blood. Because what he did is he went in
21 opening statements and said the blood and
22 tissue at the home of Mr. Wooten belonged to
23 my client, Mr. Swofford. And what does the
24 presence of this blood mean? All right. So
25 this was a repetitive issue all the way

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1 through the trial.

2 Q. So his defense was there was some of
3 that there, but you didn't -- I mean, what
4 was the defense y'all had discussed?

5 A. Well, honestly -- and I'm going to
6 say it like this. I felt initially it was
7 the alibi defense. The way he kind of
8 curtailed at the end of trial when he said
9 'is this a staged crime scene?' And if you
10 look back at it, it looked like one now, now
11 after I've seen the evidence because the
12 blood wasn't blood. And they didn't test for
13 anything else. There was this big large area
14 of red substance that they tested and it was
15 negative. There was no blood indicated.

16 However, they even tested a bullet
17 fragment on the floor. There was no
18 appreciable stains, there was no blood on it.

19 They didn't test that material that the
20 small genetic piece that identified that.
21 And I told them, 'well, that's why I told
22 that before this.' I said, you know, this
23 incident happened prior to this.

24 The house was dirty and nasty so I don't
25 know how the person may have cleaned or where

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Ronnie C. Swofford, Jr. v State of South Carolina
Case Number 14-CP-23-3763
Post-conviction relief Hearing of October 21, 2015
Testimony of Ronnie Swofford - Direct Examination

1 this piece of the wall. And he said it was
2 suspected tissue, suspected fabric and a
3 suspected bullet hole. And there was never
4 mention of a hair. So I never saw the
5 evidence issue until I got my case file. But
6 as I'm going through this, this trace
7 evidence, I notice that they claim they found
8 a hair two and a half years later on the
9 wall.

10 Q. Okay.

11 A. All right. First of all, there was
12 -- I noticed that in the trial transcript
13 Detective Miller, along with Master Deputy
14 Lewis and Sergeant Shaw took this piece of
15 wall. No signing in and out of the -- they
16 didn't follow procedures for the chain of
17 custody, number one.

18 But nobody signed this out.

19 And then for eight days this piece of
20 wall was exposed to whatever the elements may
21 be, whether it was in a car. But they took
22 it back to try to find trajectory angles and
23 I understand that. But then they cut out an
24 additional four foot by one foot section of
25 the wall, with a Sawzall. And I don't know

Ronnie C. Swofford, Jr. v State of South Carolina
Case Number 14-CP-23-3763
Post-conviction relief Hearing of October 21, 2015
Testimony of Ronnie Swofford - Direct Examination

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1 how this may have happened. I mean, I've
2 been an invited guest many of times. So it
3 wouldn't have been uncommon to find a hair in
4 the home. So I don't know when putting this
5 somewhere in the kitchen, wherever they sat
6 the wall down and doing what they were doing,
7 did they -- I felt like they didn't preserve
8 potential exculpatory evidence because there
9 was no identification of a hair.

10 The blood would have said that it wasn't
11 me. Now all of a sudden two years later
12 there's a hair.

13 Nobody's signed -- I don't know who else.
14 Just on the record there was a total of four
15 people had access to this wall and nobody
16 signed it out.

17 Q. So I guess what -- when you said
18 it's hair evidence, what did Mr. Johnston and
19 Mr. Wilson do that was ineffective in regards
20 to ---

21 A. Well, they didn't attack it, number
22 one. What kind of hair was it. There was no
23 exclusionary defense to was it a head of
24 hair. What are you saying happened here?
25 Was it an arm hair? Was it a pubic hair?

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Ronnie C. Swofford, Jr. v State of South Carolina
Case Number 14-CP-23-3763
Post-conviction relief Hearing of October 21, 2015
Testimony of Ronnie Swofford - Direct Examination

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1 None of this stuff was attacked. It wasn't.
2 I mean, was it a curly hair. Was it a
3 straight hair? I mean, at the time I had
4 relatively four or five inch length of hair.
5 So there was no defense as to this hair and
6 how it may have gotten there. And there was
7 no defense on preserving this evidence.

8 Q. Okay.

9 A. Because it was exposed by the
10 officers and it just wasn't attacked. The
11 only thing that was really questioned about
12 it is how do you determine or how do you get
13 your DNA from it and how -- no questions
14 about the hair whatsoever.

15 Q. Okay. Now, you've indicated on here
16 to and I'm taking it through. And for your
17 information, your PCR application is a part
18 of the record and the Judge can review the
19 transcript and look to see whether a lot of
20 these things. Because, I mean, you've got
21 numerous ones that ---

22 A. I do agree that there was -- some of
23 them's repetitive.

24 Q. Right.

25 A. And the reason I had done that is

Ronnie C. Swofford, Jr. v State of South Carolina
Case Number 14-CP-23-3763
Post-conviction relief Hearing of October 21, 2015
Testimony of Ronnie Swofford - Direct Examination

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1 because those were things throughout the
2 trial that were, you know, deemed to be
3 ineffective for allowing certain things for
4 the jury to be heard or shouldn't have been
5 in evidence or should have been refuted but
6 it never was. So I just wanted to identify
7 them. And I understand that if we didn't go
8 through every single thing about the blood,
9 I'm sure Your Honor would probably see what I
10 was trying to -- I'm trying to obtain in
11 this.

12 Q. Right. And what I'm trying to
13 explain to you, this is part of the record.
14 And, you know, review and look at the
15 transcript and do that. So we're not going
16 to go over every single item on here.

17 A. Yes, sir. I understand that.

18 Q. He has that for his review. I want
19 to go through a little bit. You've mentioned
20 Ricki Edwards and there was some issue in
21 regards to ---

22 A. The hearsay?

23 Q. Correct. All of that. Tell me a
24 little bit about that so that I can
25 understand what you're saying that your

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Ronnie C. Swofford, Jr. v State of South Carolina
Case Number 14-CP-23-3763
Post-conviction relief Hearing of October 21, 2015
Testimony of Ronnie Swofford - Cross Examination

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1 you know, I just felt like that both
2 attorneys for the State and the Defense knew
3 what did and did not exist and the jury
4 should not have those things.

5 Q. About the blood evidence being in
6 there when it's not?

7 A. Well, correct. And then the fact
8 that there was no preservation of the wall
9 that -- you know, they don't know where the
10 hair came from before that. I mean, and the
11 way they did it with torn gloves and
12 everybody having access to this for a certain
13 amount of time without following the protocol
14 and chain of custody.

15 Q. Okay. I have no further questions.
16 Answer any questions the Court or Ms. Ratigan
17 may have for you.

18 THE COURT: Ms. Ratigan.

19 MS. RATIGAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. RATIGAN:

22 Q. So when you met with Mr. Johnston
23 and Mr. Wilson you discussed the State's
24 evidence against you?

25 A. To extent, yes, ma'am.



November 27, 2018

Ronnie Cleveland Swofford, Jr. #00218281
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Swofford:

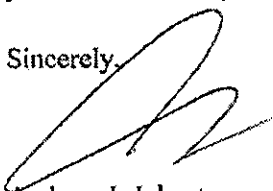
I hope this letter finds you well. I am glad to help in any way that I can. I had to refresh my memory with the transcript you sent and the file contents of which I still have in my office. I have also reviewed the documents and the emails that your mom sent to me. There were two issues which were discussed within the correspondence.

You are correct that the Evidence Technician found no "blood" on the wall (JD-G). The DNA comparison to your DNA profile was not with "blood." The DNA comparison was made with genetic material that was associated with the hair that was found embedded in the wall. I am enclosing the pages of testimony from the SLED Forensic Scientist from your transcript, which discusses this issue (pages 267-268). I have also enclosed a copy of the results of the testing, which shows the comparison to your known DNA sample.

There was other evidence in the case that was also linked to your DNA profile. A swab of suspected "blood/tissue" (JD-1) was taken from the projectile jacket (JD-E) found on the kitchen floor. The projectile jacket was viewed using special lighting; and a swab was taken from the item. It was sent to SLED for DNA testing for suspected blood/tissue. As the SLED Forensic Scientist did not see any appreciable stains on the swab, it was sent straight for DNA Analysis. No appreciable stain does not mean there was no evidence on the item. Generally, it means that it was not visible with the naked eye. Some of the witnesses may not have used the precise identifiers; however, please note that it appears to all correlate as you can see from the documentation included. I am enclosing the pages of testimony from the Evidence Technician and the SLED Forensic Scientist from your transcript, which discusses this issue (pages 178-179, 263-264). I have also included a copy of the results of the testing, which shows the comparison to your known DNA sample.

I am more that willing to admit a mistake, but I do not believe I have made an error regarding the issues you have stated in your correspondence. If you can explain it to me more clearly, I will try to assist you.

Sincerely,


Andrew J. Johnston
AJJ/tlh

Enclosures

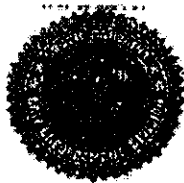
cc: Phyllis Swofford (with enclosures via email)

Andrew J. Johnston, Attorney-at-Law

184 N. Daniel Morgan Ave. | Spartanburg, SC 29306 | Mailing: PO Box 3252 | Spartanburg, SC 29304-3252

Phone: (864) 591-1093 | Telefax: (864) 591-1371 | www.spartanburglegal.com

APP. 1121



SLED LABORATORY FORENSIC SERVICES REQUEST

SLED LAB No. L09-09220

Submission: 1 8/3/2009 2:44:04PM

Name of Investigating officer: <u>Inv. Chris T Miller</u>		ORI No: <u>SC0230000</u>
Agency: <u>Greenville County Sheriff's Office</u>	Phone No: <u>864-271-5210</u>	Agency Case No: <u>109119378</u>
Fax No: _____	Email: _____	Offense: <u>ASSAULT</u>
Mailing Address: <u>Law Enforcement Center, 4</u>		County: <u>Greenville</u>
City / State / Zip: <u>McGee Street</u>		Offense Date: <u>07/27/2009</u>
CC: <u>Greenville, SC 29601</u>		Officer Involved Shooting ☐ Yes
		Rush: ☐ Yes

Is this evidence related to another lab number?

☐ Yes ☒ No

If yes, Lab Number: _____

	Agency Item No.	Description of Evidence	Analysis Requested
1	JD-1	Swab(s) - Swab of suspected blood-tissue from kitchen floor	DNA ANALYSIS
2	JD-A	Item - Yellow pattern cloth on coffee table with suspected blood from the living room of the house	DNA ANALYSIS
3	JD-B	Item - Tan colored blanket on chair with suspected blood from the living room of the house	DNA ANALYSIS

Subject(s)	Sex	Race	DOB	SSN
Ronnie Cleveland Swofford, Jr.	M	W	██████/1972	

Victim(s)	Sex	Race	DOB	SSN
Curtis Randolph Wooten	M	W	0█████/1963	

Comments

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L09-09220

Submission: 1 8/3/2009 2:44:04PM

Submitted By :

Received By :

Chris Miller

Inv. Chris T Miller

Selena Kinard

Selena Kinard
Forensic Technician

Ex. 1125
Z-2

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-457-8847
Telefax: 864-457-8810



Solicitor
W. Walter Wilkins

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

April 9, 2012

Andrew Johnston
184 North Daniel Morgan Ave.
Spartanburg, SC 29306

IN RE: State of South Carolina v. Ronnie Swofford
2009-GS-23-9403, 04, 05
2011-GS-23-7263

Mr. Johnston:

Under State's continuing duty to disclose pursuant to Rule 5, SCRCP, and Brady, attached please find recent SLED reports for a GSR kit analysis and Trace Evidence. These were provided to me as of today, and I am forwarding them to you. I am faxing you a copy of these as well. These reports were recently generated due to the fact I asked SLED to examine the GSR kit, and a section of wall, labeled JD-G. I requested the section of wall be analyzed to determine if there was any potential evidence, either trace or DNA on this item. I submitted the request two months ago, advising them of our trial date of April 16th. I am awaiting final report from DNA, and was told it should be out in next day or two. I will forward that report to you as soon as I receive it.

In addition, I contacted our Latent Analysis Division, in the Department of Public Safety, to determine if any of the latent prints lifted from the glass door on front porch were matched to anyone. Their policy is not to make any type report unless a match is confirmed. Capt. Kellet advised me today that no latents lifted in this case were matched to the defendant. The latents from the glass front door were not of AFIS quality, and as of today have not been matched to anyone. However, the latents lifted off of assorted paperwork, and not matched to Rikki Edwards, were of AFIS quality, and were searched on AFIS. No one other than Rikki Edwards was matched to any of the latents lifted from the paperwork.

**Greenville County Forensic Division
CRIME SCENE INVESTIGATION REPORT**

AGENCY: Greenville County Sheriff's Office
AREA: 03

CASE NUMBER: 1-09-119378

INCIDENT TYPE:	Gunshot Victim (Follow Up)	INCIDENT LOCATION:	Memorial Dr. Ext. Greer SC
VICTIM:	Wooten, Curtis	ADDRESS:	Same as above
COMPLAINANT:		ADDRESS:	
INV. OFFICER:	Miller	UNIT NUMBER:	

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 OF 1

On 7/31/09, the R/O responded to the incident location and met with Inv. Miller regarding the examination of the scene and the possibility of locating additional evidence related to a shooting that took place at that location on 7/27/09.

Upon arrival, the R/O met with John Wooten, who is the father of the victim. Mr. Wooten had a key to the residence and had given permission to Inv. Miller to conduct further investigation relating the shooting of his son.

The R/O entered the residence and went into the kitchen, where a hole was observed in the wall between the living room and kitchen.

The missing piece of panelling/wall had been collected by Technician Derby during the original investigation.

The R/O observed insulation behind the wall as well as black fiber board.

In an effort to locate a possible projectile that had not been recovered, the R/O cut out a section of the exterior wall and then cut out an area of the fiber board. The R/O observed an area of the interior wall that had what appeared to be tissue on it and since it was not collected originally, the R/O later collected it as DLS-1.

The R/O observed behind the fiber board, brick that had mortar protruding out of the seams. The R/O temporarily put the cut out piece of wall that had been cut by Technician Derby in place and used a trajectory rod in an effort to find where the projectile may have struck on the brick or mortar. The R/O located a spot above an area of mortar that appeared to be a lead swipe. After cutting out the section of the fiber board, the R/O examined between the fiber board and cement wall and located a lead projectile. This lead projectile was collected as DLS-2.

The piece of wall that had been collected by Technician Derby was put in place where it had been taken out of and a trajectory rod was put in place in an effort to determine the directionality and trajectory of the projectile that had entered the wall. An angle finder was placed on the trajectory rod and it was determined the projectile entered the wall at an app. 11 degree angle of ascent.

Using the laser, the projectile entered the wall at an angle consistent with the weapon being fired approximately straight on. The laser indicated a travel path that was in the direction of where an unknown caliber projectile had struck the cupboard in front of the sink and was recovered under the cupboard. This had been photographed and collected by Technician Derby.

The R/O located a suspected projectile hole in the wall near the back door and a trajectory rod was put in place with the laser attached. The laser dot struck the wall just above the hole in the wall where the piece of wall had been removed by Technician Derby. The projectile entered the kitchen wall near the back door, continued through the interior wall and was found to have penetrated the wall in the master bathroom, exited the back wall behind the toilet and entered into the side wall of the bathroom.

The R/O cut a hole in the side wall in the master bathroom and after removing some insulation, located an unknown caliber projectile in the space between the walls. The area where the projectile was located was photographed. The projectile was collected as DLS-3. No further actions were taken.

Upon returning to the Crime Scene Office the digital images were scanned into the photo database under call id # 26784. The collected items were packaged for placement into P&R.

The above actions took place between 0900 and 1045 hours.

REPORTING OFFICER	Shaw-D.L. Sgt. 122	STAR#	8561	UNIT #	918	DATE	7/31/09
REPORTING OFFICER		STAR#		UNIT #		DATE	
APPROVING SUPERVISOR	Sgt. D.L. Shaw	STAR#	8561	UNIT #	918	DATE	7/31/09

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Inv. Chris T Miller
Greenville County Sheriff's Office
Law Enforcement Center, 4 McGee Street
Greenville, SC 29601

EVIDENCE PROCESSING

~~April 04, 2012~~
SLED LAB: L09-09220
Your Case No: 109119378
Incident Date: 7/27/2009
[V] Curtis Wooten
[S] Ronnie Swofford, Jr.

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

ITEMS OF EVIDENCE:

Item: 7 Section of wall

RESULTS:

No blood indicated.

Item: 7.1 Debris

RESULTS:

Potential evidence collected and sent to the Trace Department.

~~Item: 7.2 Possible hair~~

RESULTS:

~~Potential evidence collected and sent to the DNA Department.~~



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

These examinations were conducted by DNA Evidence Processing Technician Verona Gibson and were reviewed by Forensic Scientist Stephanie M. Stanley in the DNA Casework Department.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Stephanie M. Stanley

Stephanie M. Stanley
Forensic Scientist



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

1. ~~Cherry~~ 2. ~~Cherry~~ 3. ~~Cherry~~
4. ~~Cherry~~ 5. ~~Cherry~~ 6. ~~Cherry~~
7. ~~Cherry~~ 8. ~~Cherry~~ 9. ~~Cherry~~
10. ~~Cherry~~ 11. ~~Cherry~~ 12. ~~Cherry~~

APP. 1129

F

1130

Case Id: 1-09-119378

Call Id: 26784

Greenville Forensics

Description: Shooting Incident / Home Invasion

Description: Photographs of kitchen area



Image Id: 1960620



Image Id: 1960623



Image Id: 1960626

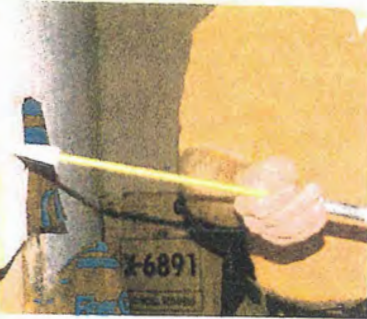


Image Id: 1960629



Image Id: 1960632



Image Id: 1960635



Image Id: 1960653



Image Id: 1960656



Image Id: 1960659



Image Id: 1960662



Image Id: 1960665



Image Id: 1960668



Image Id: 1960671

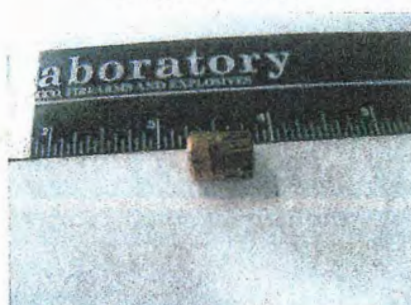


Image Id: 1960674



Image Id: 1960677

WATER DAMAGE

1131
II Id: 26784



Image Id: 1960620

Description: Shooting Incident
Description: Photographs of



Image Id: 1960623



Image Id: 1960629



Image Id: 1960632

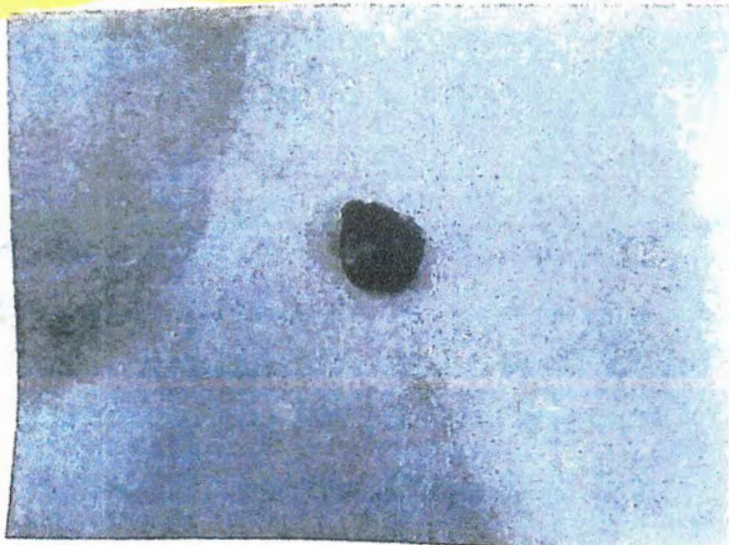
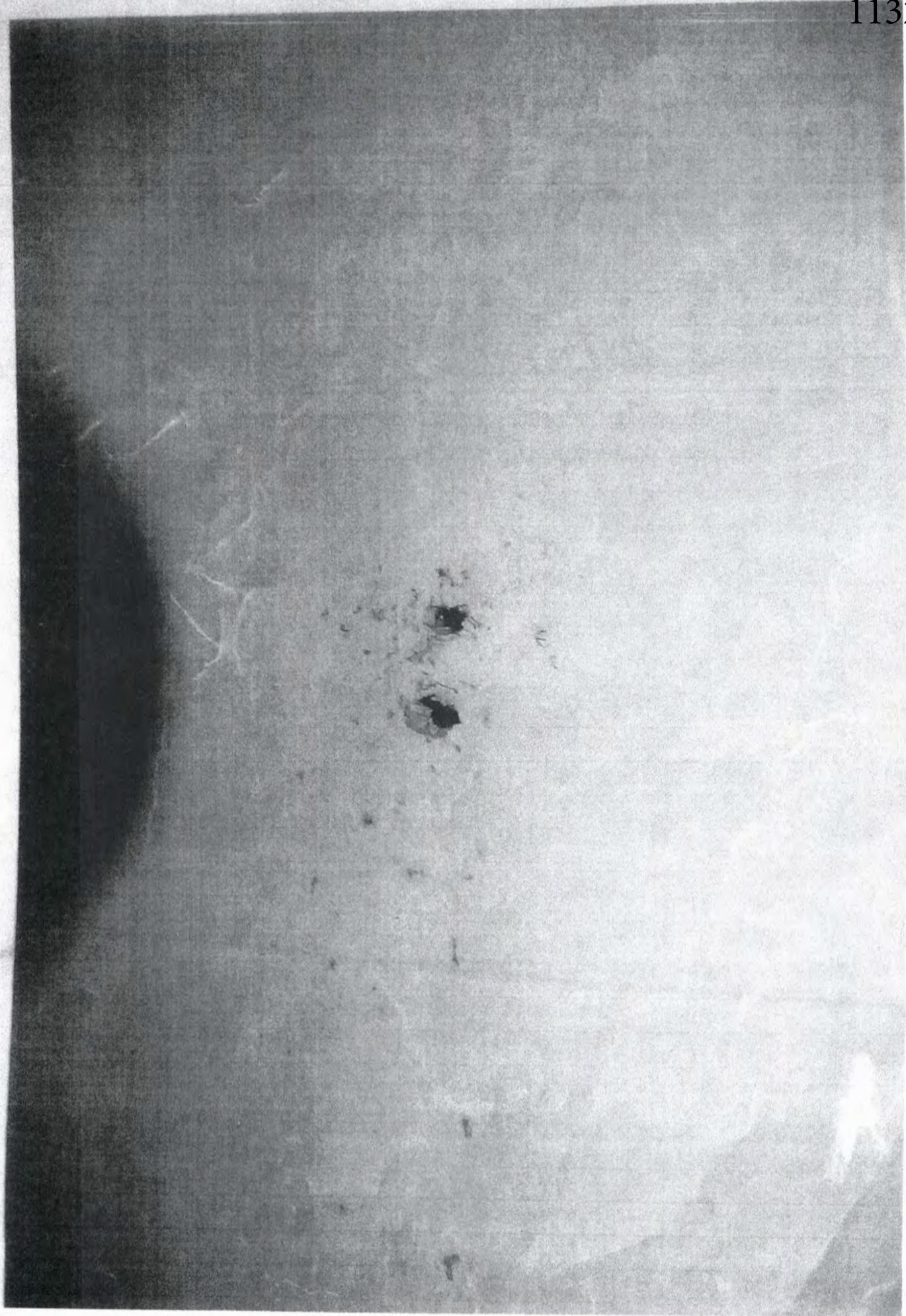


Image Id: 1960653



Image Id: 1960656

APP 1131



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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Inv. Chris T. Miller
Greenville County Sheriff's Office
Law Enforcement Center, 4 McGee Street
Greenville, SC 29601

DNA ANALYSIS
August 05, 2009
SLED LAB: L09-09220
Your Case No: 109119378
Incident Date: 7/27/2009
[S] Ronnie Swofford, Jr.
[V] Curtis Wooten

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1	Swab of suspected blood-tissue from kitchen floor	1	See DNA analysis.
2.1	Cutting from yellow gingham print table cloth	2.1	Blood indicated. See DNA analysis.
3.1	Cutting from beige chenille material blanket	3.1	Blood indicated. See DNA analysis.
4	Buccal swabs from Curtis Randolph Wooten	4	See DNA analysis.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

August 05, 2009

DNA ANALYSISITEMS ANALYZED:

- 4 Buccal swabs from Curtis Randolph Wooten
- 1 Swab of suspected blood-tissue from kitchen floor
- 2.1 Cutting from yellow gingham print table cloth
- 3.1 Cutting from beige chenille material blanket

EXAMINATIONS

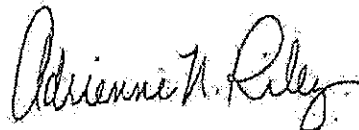
DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from item 1 is from an unidentified male individual and has been entered into the Combined DNA Index System (CODIS).

The DNA profile developed from items 2.1 and 3.1 is consistent with the DNA profile of Curtis Randolph Wooten.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Adrienne N. Riley
Forensic Scientist

cc: Greenville County Solicitor's Office



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
4 C.R. Wooten	12,13	29,31	8,10	11,12	16,18	6,7	10,11	9,12	16,17	14,15	15,19	8,9	13,18	10,11	21,23	XY
1 Swab-kitchen floor	13,14	29,30	12	12	15,17	8	12,13	12,13	17,24	13,2,15	17,18	8,12	12,13	12,13	22,23,2	XY
2.1 Table cloth	12,13	29,31	8,10	11,12	16,18	6,7	10,11	9,12	16,17	14,15	15,19	8,9	13,18	10,11	21,23	XY
3.1 Blanket	12,13	29,31	8,10	11,12	16,18	6,7	10,11	9,12	16,17	14,15	15,19	8,9	13,18	10,11	21,23	XY

APP. 1135



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

1135



DEPARTMENT OF
FORENSIC DNA ANALYSIS

Evidence Worksheet

Lab #: L09-09220
Analyst: Adrienne N. Riley
Date: 8/3/2009
Victim: Curtis R. Wooten
Subject: Ronnie C. Swofford, Jr.

1	Swab of suspected blood/tissue from kitchen floor					DNA	?	Per Inv. Miller: from bullet that passed through subject Piece of material present on swab. <u>No appreciable stain</u> Went straight to PCR.
2.1	Cutting from yellow gingham print table cloth		+			DNA	Yes	
3.1	Cutting from beige chenille material blanket		+			DNA	Yes	
4	Buccal swabs from Curtis Randolph Wooten (2)					DNA	Yes	Cut ~1/4 of each swab; Received on 8/4/09

Phenolphthalin SR 1170
3% H₂O₂ SR 1118
Quality Control ✓ 8.3.09

AP Spot SC
Quality Control

9 AR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
RONNIE C. SWOFFORD,	)	~~2007-CP-23-1322~~
S.C.D.C. No. 218281,	)	2018 CP 2305662
	)	
Applicant,	)	ORDER GRANTING
v.	)	<u>AUSTIN V. STATE</u>
	)	BELATED PCR APPEAL
State of South Carolina,	)	
Respondent.	)	

FILED-CLERK OF COURT
PAUL B. WILKINSON
CLERK OF COURT
GREENVILLE, SC, 29
7:01 NOV 23 PM 2:33

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 6, 2018. An evidentiary hearing into the matter was convened on November 8, 2021, via CISCO WEBEX virtual platform in the Thirteenth Judicial Circuit. The Applicant was present via video and telephonic audio and was represented by Susannah C. Ross, Esquire. Assistant Attorney General Taylor Z. Smith represented the Respondent.

PROCEDURAL HISTORY

The Applicant is presently confined in Tyger River Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2009 term of the Greenville County Grand Jury for first-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, the Applicant was indicted for assault with intent to kill (2011-GS-23-7263). Andrew Johnson, Esquire, and Gerald Wilson, Esquire, represented the Applicant on the charges. After Assistant Solicitor Kris Hodge called the case to trial before the Honorable Edward W. Miller, the Applicant was found guilty as indicted and

sentenced to concurrent terms of life without parole for burglary first degree and assault and battery with intent to kill, five years for possession of a pistol by a person convicted of a violent crime, and ten years for assault with intent to kill. Due to the life sentence for count one, the judge did not sentence the Applicant 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 the Applicant's behalf at the South Carolina Court of Appeals. The appeal was dismissed at the Applicant's request after his motion to relieve LaNelle DuRant, Esquire, of the South Carolina Office of Appellate Defense was denied. The Applicant then filed a pro se motion for a new trial which was subsequently dismissed as was the appeal of its dismissal. The Remittitur was issued July 9, 2014.

The Applicant 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, Esquire represented the Applicant and Assistant Attorney General Karen Ratigan represented the State. The PCR court denied relief on December 30, 2015, by Order filed January 7, 2016. The Applicant filed an untimely Applicant's Motion for Reconsideration on February 2, 2016, which Judge Gravely denied February 18, 2016. The Applicant then filed a notice of appeal which was dismissed for being untimely by Swofford v. State, Supreme Court Order filed September 27, 2018.

ALLEGATIONS

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel for failure to timely file an appeal from the Order filed on January 7, 2016, denying post-conviction relief.

2. Applicant further requests to argue issues as to the chain of custody of DNA evidence as outlined in his Motion for Reconsideration so that that may be adequately preserved for the appellate record.

ARGUMENT AND TESTIMONY PRESENTED

An evidentiary hearing for the Applicant's current PCR application was convened on November 8, 2021, via CISCO WEBEX virtual platform in the Thirteenth Judicial Circuit. At the outset of the hearing the State moved to exclude testimony by Attorney John Reckenbeil regarding problems with chain of custody regarding fungible DNA evidence that was presented in the Applicant's trial. Respondent said the testimony amounted to hybrid representation and was improper expert opinion testimony under Green v. State. Green v. State, 351 S.C. 184, 198, 569 S.E.2d 318 (2002). The Applicant argued that Mr. Reckenbeil had been retained to review the transcript and discovery in the case and his testimony would clarify issues that the Applicant had brought up in his first PCR but may not have been properly preserved in the record due to the untimely filing of the Applicant's Motion for Reconsideration.

Citing Austin v. State and Aice v. State, Respondent argued that all issues beyond whether the Applicant's appeal rights were violated were successive and procedurally barred because they could have been raised at the first PCR. Austin v. State, 305 S.C. 453, 409 SE2d 392 (1991); Aice v. State, 302 S.C. 448, 409 SE2d 392 (1991). Respondent further argued that since the issues were not newly discovered evidence they were inadmissible. The Applicant stated that this issue was not "successive" because there was sufficient reason to consider the testimony since was not raised properly in the original PCR due to the untimely filing of the Applicant's Motion for Reconsideration. Aice, 302 S.C. at 450, 409 SE2d at 394. The Applicant argued further that the testimony should be allowed because the Applicant has the burden to

show a meritorious issue and should be given the opportunity to fully preserve the issue that was improperly raised by original PCR counsel.

The State's motion to exclude Mr. Reckenbeil's testimony was granted and the Applicant's objection was noted. The Applicant then proffered Mr. Reckenbeil's testimony that he had reviewed the Applicant's trial transcript and discovery materials and found irregularities with chain of custody and the trial presentation of DNA evidence. He said he prepared supportive excerpts and these materials were made a court's exhibit for purposes of the proffer over the State's objection. The Applicant then proceeded on the allegation of ineffective assistance of PCR counsel for failing to perfect a notice of appeal from the Applicant's first PCR action.

The Applicant, Ronnie Swofford testified that he made it clear to his PCR counsel, Mills Ariail, that he wanted to appeal in the event of the denial of his first PCR. He said that prior to his hearing he prepared a document for PCR counsel outlining the allegations and exhibits he wanted to be made part of the record. He said he amended that document into a SCRCP 59(e) motion with exhibits and submitted it to PCR counsel to assure the preservation of all his PCR allegations for appellate review. The exhibits included property and evidence and SLED lab reports regarding a section of wall from the kitchen which was analyzed with no blood indicated. Excerpts of the trial transcript included pages where the Solicitor in opening statement argued that the Applicant's DNA at the scene was from a spatter on the kitchen wall. Trial transcript p. 42, l. 7. It included pages in State's closing argument referencing State's Exhibit 39, a photograph of the kitchen wall and arguing that it showed fresh body tissue and blood after Investigator Christopher Miller testified as an expert rebuttal witness that State's Exhibit 39 was a photograph showing a portion of the kitchen wall with fresh blood splatters. Trial Transcript p. 685, l. 4-16.

& p. 636, l. 11. The Applicant testified that these references to fresh blood and others throughout the trial undermined his defense. He said that he had testified in his first PCR that the DNA evidence against him was not blood and would have been inadmissible had it been challenged by his trial attorney. He said he was concerned the issue was not adequately addressed in his first PCR's Order of Dismissal. Order. p. 7.

Mills Ariail testified that he represented the Applicant at his first PCR and did file a Motion for Reconsideration with the Applicant's 59(c) attached as a supporting brief. He did not recall what happened with the filing of the notice of appeal but knew it was dismissed for not being timely. The Respondent conceded that the Applicant had requested but was denied an opportunity to seek appellate review due to the circumstances in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the Applicant's allegation that he is entitled to a belated appeal due to his prior PCR attorney's failure to perfect an appeal on his behalf is not procedurally barred and is meritorious. Where a post-conviction relief judge determines the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).¹ See also King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).

This Court further finds the Applicant did not knowingly and voluntarily waive his right to appellate review and this therefore entitled to a belated review of the denial of his first PCR application. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). The Applicant never received a full "bite at the apple" because he expressed his desire to seek review of the denial of

¹ Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the Applicant must petition the Supreme Court for a belated review. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

his PCR application pursuant to his state law rights set fourth in S.C. Code Ann. Sec. 17-27-100 and his appeal was never perfected. The Applicant's denial of an appeal can be remedied by a petition for belated review by his current PCR attorney pursuant to Austin v. State. See id.

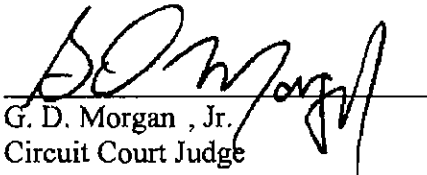
CONCLUSION

All allegations except the belated appeal pursuant to Austin v. State are barred because they are successive. The Applicant has proven by a preponderance of the evidence that he did not knowingly and voluntarily waive the appeal of the denial of his first PCR application.

IT IS THEREFORE ORDERED:

1. That the Austin claim is granted and the claim that PCR counsel failed to adequately preserve the record is denied;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 227, SCACR for the appropriate procedure for a belated appeal.

AND IT IS SO ORDERED this 18th day of November, 2021.


 G. D. Morgan, Jr.
 Circuit Court Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina.

Copy mailed to	
TIS.	General / S. Ross
on 11	23 2021

ROSS & ENDERLIN, PA
ATTORNEYS AT LAW

December 3, 2021

The Honorable Patricia A. Howard
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: Ronnie . Swofford v. State of South Carolina
2018-CP-23-5662

Dear Ms. Howard:

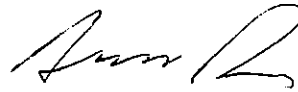
By way of explanation Pursuant to Rule 243(c), SCACR; Mr. Swofford wants to assure his arguments are preserved in the record after an untimely filing of the 59(e) motion and appeal following his initial PCR hearing. At his 2021 hearing, the State's motion to exclude testimony by Attorney John Reckenbeil regarding problems with chain of custody regarding fungible DNA evidence that was presented in the Applicant's trial was granted and the Applicant's objection was noted. The Applicant then proffered Attorney John Reckenbeil's testimony that he had reviewed the Applicant's trial transcript and discovery materials and found irregularities with chain of custody and the trial presentation of DNA evidence as Mr. Swofford had argued at his initial PCR hearing. He said he prepared supportive excerpts and these materials were made a court's exhibit for purposes of the proffer over the State's objection.

The State argued such testimony amounted to hybrid representation and was improper expert opinion testimony under Green v. State and that that all issues beyond whether the Applicant's appeal rights were violated were successive and procedurally barred because they could have been raised at the first PCR. Austin v. State, 305 S.C. 453, 409 SE2d 392 (1991); Aice v. State, 302 S.C. 448, 409 SE2d 392 (1991); Green v. State, 351 S.C. 184, 198, 569 S.E.2d 318 (2002). The Applicant argued that this issue was not successive because Mr. Reckenbeil had been retained to review the transcript and discovery in the case and his testimony would clarify issues that the Applicant had brought up in his first PCR but may not have been raised properly in the record due to the untimely filing of the Applicant's Motion for Reconsideration. Aice, 302 S.C. at 450, 409 SE2d at 394. The Applicant argued further that the testimony should be allowed because the Applicant has the burden to show a meritorious issue and should be given the opportunity to fully preserve the issue that was improperly raised by original PCR counsel. For this reason, the Applicant believed this is a meritorious issue that should be reviewed on appeal.

The undersigned was appointed in this matter and moves to be relieved at this time.

December 3, 2021

Sincerely,



Susannah Ross
Attorney at Law #11205

cc: Assistant Attorney General Taylor Smith
Office of Appellate Defense
Greenville County Clerk of Court
Ronnie Swofford

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J.D. Morgan, Jr., Circuit Court Judge

2018-CP-23-5662

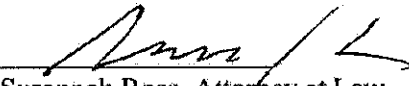
Ronne C. Swofford, ... Appellant,
v.

The State, ... Respondent.

NOTICE OF APPEAL

Pursuant to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, Ronne C. Swofford appeals the Honorable Perry H. Gravely's Order of Dismissal filed on January 7, 2016. Mr. Swofford further appeals the ruling that issues other than those regarding appeal rights were successive in Honorable J.D. Morgan, Jr.'s November 18, 2021, Order Granting Belated PCR Appeal.

This 6 day of December, 2021.


Susannah Ross, Attorney at Law
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Taylor Zane Smith, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

RECEIVED

DEC 10 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

RONNE C. SWOFFORD,
APPELLANT,

VS.

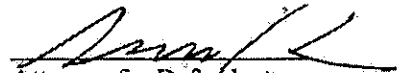
THE STATE OF SOUTH CAROLINA,
RESPONDANT.

IN THE SUPREME COURT

CERTIFICATE OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Notice of Appeal** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
PCR Divison
P.O. Box 11549
Columbia, SC 29211


Attorney for Defendant

This 6 day of December, 2021

RECEIVED

DEC 10 2021

S.C. SUPREME COURT

WITNESSES

C. Miller

CM

Greenville County Sheriffs Office

8/18/2009

ARREST WARRANT NUMBER

1478818

ACTION OF GRAND JURY

TRUE BILL*Nicki Cummins*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

KBF

017103

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2009

5-17-12

THE STATE

vs.

RONNIE CLEVELAND SWOFFORD, JR.

Indictment for

✓
0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

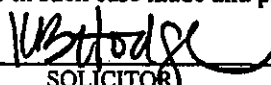
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on NOV 17 2009 the Grand Jurors of Greenville
County present upon their oath:

That RONNIE CLEVELAND SWOFFORD, JR. did in Greenville County, on or about the 27th day of July 2009,
willfully and unlawfully enter the dwelling of CURTIS WOOTEN located at [REDACTED],
Greer, without consent and with the intent to commit a crime therein and armed with a deadly weapon, and/or did
cause physical injury to any person who is not a participant in the crime. This is in violation of §16-11-311 of the
South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C. T. Miller

Greenville County Sheriffs Office

10/9/2009

ARREST WARRANT NUMBER

1343291

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

KBF

007263

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September

TERM 2011

5-17-12

THE STATE

vs.

RONNIE CLEVELAND SWOFFORD JR

Indictment for

✓
0768

ASSAULT WITH INTENT TO KILL

VIOLATION § C/L

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT WITH INTENT TO KILL

At a Court of General Sessions, convened on **SEP 13 2011** the Grand Jurors of Greenville
County present upon their oath:

That RONNIE CLEVELAND SWOFFORD, JR. did in Greenville County, on or about the 27th day of July,
2009, with malice aforethought commit an assault upon Rikki Danelle Edwards and the defendant had the
apparent present ability to complete the act. This is in violation of the Common Law of the State of South
Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C. Miller *CM*

Greenville County Sheriffs Office

8/18/2009

ARREST WARRANT NUMBER

1478820

ACTION OF GRAND JURY

TRUE BILL*Nicki Cummins*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

KBF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2009

5-17-12

THE STATE

vs.

RONNIE CLEVELAND SWOFFORD, JR.

Indictment for

✓
2364POSSESSION OF A PISTOL BY A PERSON
CONVICTED OF A VIOLENT CRIME

VIOLATION § 16-23-0030

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

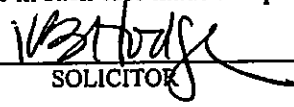
INDICTMENT FOR
POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A
VIOLENT CRIME

At a Court of General Sessions, convened on **NOV 17 2009** the Grand Jurors of Greenville

County present upon their oath:

That RONNIE CLEVELAND SWOFFORD, JR. did in Greenville County, on or about the 27th day of July 2009, possess or acquire a pistol, within this State, the defendant having been convicted of VOLUNTARY MANSLAUGHTER. This is in violation of § 16-23-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C. Miller

Greenville County Sheriffs Office

8/18/2009

ARREST WARRANT NUMBER

COUNT I - 1478817 COUNT II - 1478819

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

KBF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2009

THE STATE

vs.

RONNIE CLEVELAND SWOFFORD, JR.

Indictment for

0014 and 0549

ASSAULT AND BATTERY WITH INTENT TO
KILL and POSSESSION OF A WEAPON DURING
THE COMMISSION OF A CRIME

VIOLATION § 16-03-0620 and § 16-23-0490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) ASSAULT AND BATTERY WITH INTENT TO KILL and
) POSSESSION OF A WEAPON DURING THE COMMISSION OF A
) CRIME.

At a Court of General Sessions, convened on NOV 17 2009 the Grand Jurors of Greenville
 County present upon their oath:

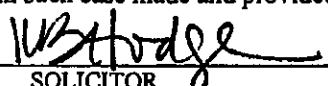
COUNT I

That RONNIE CLEVELAND SWOFFORD, JR. did in Greenville County, on or about the 27th day of July 2009,
 willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon
 CURTIS WOOTEN. This is in violation of §16-3-620 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That RONNIE CLEVELAND SWOFFORD, JR. did in Greenville County, on or about the 27th day of July 2009,
 possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit:
 ASSAULT AND BATTERY WITH INTENT TO KILL. This is in violation of §16-23-490 of the South Carolina
 Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Ronnie Cleveland Swofford Jr

AKA:

Race: WHITE Sex: M Age: 39DOB: 1972 SS#: Address: City, State, Zip: Spartanburg, SC 29306DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Assault with intent to kill (AWIK)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307263A/W#: 1343291Date of Offense: 7/27/2009S.C. Code § : C/L, 17-25-0030CDR Code #: 0768

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § C/L, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: VBHodge, Kris8245
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	<u>5</u>
3% to County (if paid in installments)		\$	
TOTAL		\$	

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk Paul S. WickenmanCourt Reporter: V. Cross

SCCA/217 (03/2011)

Presiding Judge 2011 W. M. QeJudge Code: 2130Sentence Date: 5/17/12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Ronnie Cleveland Swofford Jr

AKA:

Race: WHITE Sex: M Age: 39DOB: 1972 SS#: Address: City, State, Zip: Spartanburg, SC 29306DL#: 999999999 SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hodge, KrisSC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. Recipient: May serve W/E beginning Substance Abuse Counseling ☐

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ Random Drug/Alcohol testing ☐§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \$ paid to Public Defender Fund§ 56-5-2995 (DUI Assessment) \$12 \$ Other: § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ TOTAL \$

Clerk of Court/ Deputy Clerk

Paul B. WickensamerCourt Reporter: V. Cross

Presiding Judge

Judge Code: 2130Sentence Date: 5/17/12

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Ronnie Cleveland Swofford Jr

AKA:

Race: WHITE Sex: M Age: 39DOB: 1972 SS#: Address: City, State, Zip: Spartanburg, SC 29306DL#: 999999999 SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and battery with Intent to Kill (ABWIK)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2309404A/W#: 1478817Date of Offense: 7/27/2009S.C. Code § : 16-03-0620CDR Code #: 0014

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hodge, Kris8245
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE without PAROLE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. WickensCourt Reporter: V. Cross

SCCA/217 (03/2011)

Presiding Judge S. W. M. Q.Judge Code: 2130Sentence Date: 5/17/12

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Ronnie Cleveland Swofford Jr

AKA: _____

Race: WHITE Sex: M Age: 39DOB: 1972 SS#: _____

Address: _____

City, State, Zip: Spartanburg, SC 29306DL#: 999999999 SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Sale or delivery of pistol to, and possession by, certain persons unlawful, stolen pistolin violation of § 16-23-0030, 0050 of the S.C. Code of Laws, bearing CDR Code # 2364
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Hodge, Kris 6245

Hodge, Kris

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
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Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Paul B. WickenhamCourt Reporter: V. Cross

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2150Sentence Date: 5/17/12

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

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

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

PETITION FOR WRIT OF CERTIORARI

JOANNA K. DELANY
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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S.C. SUPREME COURT

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The PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to <i>Austin v. State</i> , 305 S.C. 453, 409 S.E.2d 395 (1991), where the evidence showed Petitioner wanted to appeal but PCR counsel did not timely serve notice of intent to appeal, and where the State agreed Petitioner was entitled to belated review.....	5
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ISSUE PRESENTED

Whether the PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where the evidence showed Petitioner wanted to appeal but PCR counsel did not timely serve notice of intent to appeal, and where the State agreed Petitioner was entitled to belated review?

STATEMENT

During the November term of 2009, a Greenville County Grand Jury indicted Petitioner, Ronnie Swofford, for first-degree burglary, assault and battery with intent to kill, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person convicted of a violent crime. During the September term of 2011, a Greenville County Grand Jury indicted Petitioner for assault with intent to kill. App. 1147 – 1154. Petitioner was tried before the Honorable Edward W. Miller from May 14 – 17, 2012. Petitioner was represented by Andrew Johnston and Gerald Wilson. Kris Hodge prosecuted the case. App. 1. The State sought a life without parole sentence for two of the offenses pursuant to S.C. Code Ann. § 17-25-45 based on Petitioner's prior convictions. App. 728, l. 25 – 729, l. 22.

Petitioner was convicted as indicted. App. 725, l. 23 – 726, l. 18. The court sentenced him to life without parole for first-degree burglary, life without parole for assault and battery with intent to kill, ten years for assault with intent to kill, and five years for possession of a pistol by a person convicted of a violent crime. The court did not impose a sentence for possession of a weapon during the commission of a violent crime. App. 725, l. 23 – 726, l. 18.

Petitioner's direct appeal was dismissed by the Court of Appeals at his request on June 28, 2013. App. 733 – 736. Petitioner then filed a motion for a new trial based on after-discovered evidence.¹ See App. 737 – 740. On December 9, 2013, the circuit court issued an order denying Petitioner's motion. App. 741 – 745. Petitioner's appeal of the order denying his motion for a new trial based on newly-discovered evidence was dismissed by the Court of Appeals at his request on June 23, 2014. App. 752 – 753.

¹ Undersigned counsel was unable to obtain Petitioner's motion for a new trial based on after-discovered evidence; the Greenville County Clerk of Court's Office did not have the motion.

On July 8, 2014, Petitioner filed an application for post-conviction relief (PCR). App. 754 – 761. On January 13, 2015, the State made its return. App. 762 – 768. On October 21, 2015, a hearing was held on the matter before the Honorable Perry H. Gravely. Mills Ariail represented Petitioner. Karen Ratigan represented the State. App. 778. On January 7, 2016, the PCR court issued an order of dismissal. App. 858 – 868. On February 2, 2016, PCR counsel filed and served a motion to alter or amend the judgement pursuant to Rule 59(e), SCRCF. App. 869 – 891. On February 8, 2016, the State made a return. App. 892 – 893. On February 19, 2016, the PCR court denied the motion. App. 894 – 895.

On March 3, 2016, PCR counsel filed and served an untimely notice of appeal of Petitioner's PCR denial. App. 896 – 897. On September 27, 2018, the Court of Appeals issued an order dismissing the appeal based on the untimely notice of appeal. App. 989.

On November 6, 2018, Petitioner filed a second PCR application alleging ineffective assistance of PCR counsel Ariail for failing to file and serve a timely notice of intent to appeal and seeking appellate review of his PCR denial pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 992 – 1004. On December 13, 2019, the State made its return and partial motion to dismiss. App. 1005 – 1011. An evidentiary hearing was convened via Webex on November 8, 2021 before the Honorable G.D. Morgan, Jr. Susannah Ross represented Petitioner and Taylor Smith represented the State. App. 1012 – 1063.

Petitioner testified that he told PCR counsel Ariail he did want to appeal in the event his PCR was denied. App. 1046, ll. 2-7. Petitioner said he had even prepared a Rule 59(e) motion in the event PCR was denied and provided it to PCR counsel Ariail. App. 1046, ll. 7-14. PCR counsel Ariail testified that he knew Petitioner wanted to appeal. App. 1061, ll. 14-16. He was not sure

why his service of the Rule 59(e) motion was untimely.² The Assistant Attorney General also conceded that Petitioner was entitled to belated appellate review under *Austin*. App. 1062, ll. 2-3.

Petitioner also sought to introduce testimony he believed necessary to clarify and preserve his arguments from his first PCR. App. 1018, l. 18 – 1034, l. 14. The State moved to dismiss any claims other than the *Austin* claim, arguing the factual record was set regarding ineffective assistance of trial counsel at the first PCR hearing. App. 1022, ll. 4-7. The court granted the motion but allowed Petitioner to proffer the evidence. App. 1032, l. 10 – 1034, l. 4. The court also ruled Petitioner was entitled to *Austin* review. App. 1062, ll. 2-5.

By order filed November 23, 2021, Judge Morgan granted Petitioner a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 1137 – 1142.

This petition for writ of certiorari pursuant to *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992), follows.

² The Court of Appeals dismissed Petitioner’s appeal of his PCR denial because it found that both the Rule 59(e) motion and the notice of intent to appeal were untimely served. App. 989.

ARGUMENT

The PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where the evidence showed Petitioner wanted to appeal and PCR counsel did not timely serve notice of intent to appeal, and where the State agreed Petitioner was entitled to belated review.

The PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to *Austin v. State*. In *Austin*, this Court framed the question as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. The proper scope of review of the PCR court’s ruling is whether there is any evidence of probative value to uphold the PCR court’s findings. *Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984); *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007).

As seen, Petitioner testified that he did want to appeal if post-conviction relief was denied and that he told his attorney so. App. 1046, ll. 2-7. PCR counsel Ariail testified that he understood Petitioner wanted to appeal. App. 1061, ll. 14-16. However, as found by the Court of Appeals in its order dismissing the appeal, PCR counsel did not timely serve the motion to alter or amend the judgment and he did not timely serve the notice of intent to appeal. App. 989. The State conceded Petitioner was entitled to belated appellate review under *Austin*. App. 1062, ll. 2-3. There is ample evidence to support the PCR court’s finding that Petitioner desired to appeal, told his counsel he wanted to appeal, but the notice of appeal was not timely served.

In *Austin*, this Court recognized that the right to seek appellate review of the denial of PCR is expressly authorized by S.C. Code Ann. § 17-27-100. *Austin*, 305 S.C. at 454, 409 S.E.2d at

396. Under *Austin*, the PCR court correctly ruled that Petitioner's desire for an appeal was communicated to PCR counsel and notice of appeal was not timely served. Under the "any evidence" standard of review of *Webb*, this Court should hold that the PCR court's ruling was correct, grant certiorari, and grant Petitioner a belated appeal from the denial of his original application for post-conviction relief.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for a writ of certiorari and affirm the lower court's determination that Petitioner is entitled to belated appellate review, and review the petition for writ of certiorari pursuant to *Austin* that was filed simultaneously with this petition.

sl Joanna K. Delany

Joanna K. Delany
Appellate Defender
S.C. Bar No. 76081

This 11th day of July, 2022.

ATTORNEY FOR PETITIONER

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Jul 11 2022

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

s/ Joanna K. Delany

Joanna K. Delany
Appellate Defender
S.C. Bar No. 76081

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

ATTORNEY FOR PETITIONER

This 11th day of July, 2022.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

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

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN V. STATE

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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S.C. SUPREME COURT

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Petitioner was denied effective assistance of counsel where counsel failed to challenge the prosecution's claim that Petitioner's fresh blood was splattered on the wall, where SLED found there was no blood on the wall, and where the freshness of the (nonexistent) blood was used to discredit Petitioner's alibi.	12
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ISSUE PRESENTED

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

STATEMENT

Procedural history

During the November term of 2009, a Greenville County Grand Jury indicted Petitioner, Ronnie Swofford, for first-degree burglary, assault and battery with intent to kill, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person convicted of a violent crime. During the September term of 2011, a Greenville County Grand Jury indicted Petitioner for assault with intent to kill. App. 1147 – 1154. Petitioner was tried before the Honorable Edward W. Miller from May 14 – 17, 2012. Petitioner was represented by Andrew Johnston and Gerald Wilson. Kris Hodge prosecuted the case. App. 1. The State sought a life without parole sentence for two of the offenses pursuant to S.C. Code Ann. § 17-25-45 based on Petitioner's prior convictions. App. 728, l. 25 – 729, l. 22.

Petitioner was convicted as indicted. App. 725, l. 23 – 726, l. 18. The court sentenced him to life without parole for first-degree burglary, life without parole for assault and battery with intent to kill, ten years for assault with intent to kill, and five years for possession of a pistol by a person convicted of a violent crime. The court did not impose a sentence for possession of a weapon during the commission of a violent crime. App. 725, l. 23 – 726, l. 18.

Petitioner's direct appeal was dismissed by the Court of Appeals at his request on June 28, 2013. App. 733 – 736. Petitioner then filed a motion for a new trial based on after-discovered evidence based on the discovery of potential trial witness Terry Stevens.¹ See App. 737 – 740. On December 9, 2013, the circuit court issued an order denying Petitioner's motion. App. 741 – 745. Petitioner's appeal of the order denying his motion for a new trial based on newly-

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On November 6, 2018, Petitioner filed a second PCR application seeking appellate review of his PCR denial pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 992 – 1004. On December 13, 2019, the State made its return and partial motion to dismiss. App. 1005 – 1011. A hearing was convened via Webex on November 8, 2021 before the Honorable G.D. Morgan, Jr. Susannah Ross represented Petitioner and Taylor Smith represented the State. App. 1012 – 1063. By order filed November 23, 2021, Judge Morgan granted Petitioner a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 1137 – 1142.

Relevant facts

Curtis Wooten, Complainant, alleged that at approximately 2:30 a.m. on July 27, 2009, a gunman wearing a ski mask entered his home in Greer just after Complainant walked into the house with groceries. Complainant alleged the gunman called Complainant's name and when Complainant turned, the gunman fired two shots, striking Complainant in the abdomen. Complainant returned fire with one shot from his own gun, striking the gunman. Rikki Edwards, Complainant's girlfriend, was home during the shooting but she was not hit by gunfire. Complainant and Edwards called 911 and drove to the hospital. App. 63, ll. 12-22; App. 69, l. 15 -77, l. 8. The 911 operator asked if Complainant knew who had shot him and Complainant did not answer. App. 108, ll. 11-20. Police initially suspected Edwards shot Complainant herself. App. 304, ll. 14-24; App. 340, l. 4 – 341, l. 19.

Complainant was badly injured, and ultimately had to be put on a ventilator for some time and have his spleen and a kidney removed, and he suffered other serious problems. App. 137, l. 18 – 139, l. 23. However, Officer Hayes went to the hospital at 2:45 a.m. and was able to talk to Complainant briefly as treatment was being initiated. Officer Hayes asked Complainant if he knew who had shot him and Complainant said no. Officer Hayes then asked Complainant if he knew anyone who would want to do this to him. Complainant replied that he thought Petitioner would do this to him because Petitioner owed him money. Officer Hayes asked if Complainant was certain that Petitioner was the person who shot him and Complaint said he was not. Nevertheless, Complainant claimed at trial he was 99.9 percent sure Petitioner was the gunman because he saw Petitioner's face through the opening of the ski mask and because he recognized Petitioner's voice. App. 66, l. 21 – 67, l. 17; App. 84, l. 20 – 87, l. 7; App. 111, l. 12 – 115, l. 22; App. 131, l. 5 – 133, l. 11; App. 142, l. 5 – 144, l. 8.

Law enforcement searched Complainant's home for evidence and they found 3 shell casings and a bullet jacket on the floor. They saw a hole in the kitchen wall. A red substance was splattered on the wall around the hole and they thought it might be blood. App. 156, l. 17 – 165, l. 23. (It was not blood. Petitioner would later explain Complainant's home was "dirty and nasty.") App. 793, l. 24. Officers collected the casings and the bullet jacket, and they cut out the section of the wall that had the bullet hole and splattered substance. App. 165, l. 24 – 166, l. 5; App. 177, l. 24 – 179, l. 18; App. 189, l. 9 – 196, l. 13. Officers sent evidence to SLED and asked for a rush on the DNA analysis. Petitioner's DNA was already in the system and was quickly matched to an unspecified piece of evidence from the scene (possibly the bullet jacket). App. 311, l. 1 – 312, l. 9; App. 316, ll. 15-23. A warrant was sought for Petitioner's arrest, and he was apprehended a few weeks later with round, scabbed wounds on his arm. App. 319, l. 15 – 321, l. 10; App. 334, ll. 19-22.

Petitioner testified at his trial, and he denied shooting Complainant. App. 569, ll. 19-21. However, Petitioner explained that he himself had been shot by Complainant about a week prior to this incident when Complainant accidentally shot him in the arm while Complainant was intoxicated. App. 531, l. 20 – 540, l. 18. Petitioner presented the testimony of several witnesses who had seen the gunshot wound or had seen his arm bandaged days prior to the incident date. App. 369, l. 7 – 370, l. 21; App. 377, l. 2 – 380, l. 5; App. 391, l. 15 – 394, l. 6; App. 408, l. 21 – 409, l. 23; App. 498, l. 14 – 499, l. 22.

Petitioner also presented an alibi defense. Petitioner presented the testimony of a friend who had seen him driving home the night of the incident, a neighbor who saw him arrive home that night, and the testimony of Petitioner's fiancée and her daughter who were home with him at the time Complainant was shot. App. 415, l. 9 – 417, l. 12; App. 450, l. 13 – 453, l. 9; App. 463,

l. 25 – 469, l. 1; App. 473, l. 10 – 479, l. 14. Petitioner admitted he had prior criminal convictions and he was cross-examined on his failure to explain his defense to law enforcement prior to trial. App. 501, l. 21 – 502, l. 1; App. 615, l. 8 – 617, l. 12. Several of the defense witnesses had prior criminal convictions. App. 388, l. 22 – 389, l. 2; App. 394, l. 20 – 395, l. 9; App. 419, ll. 4-6. Of note, Petitioner’s fiancée, Shannon Lawter, was further impeached.²

SLED analyzed the forensic evidence in this case, and the relevant evidence presented by the State’s witnesses during its case in chief was as follows. An unspecified type of hair from the cut-out section of the wall was found to match Petitioner’s DNA. The hair had tissue attached to the root. A “380 auto” bullet jacket found on the floor which contained suspected blood tissue was swabbed for analysis. The swab was not tested for the presence of blood but it was tested for DNA. The swab was found to match Petitioner’s DNA. As to both the swab from the bullet jacket and the hair, there was a 1 in 24 quadrillion probability of randomly selecting an unrelated individual having a DNA profile matching these items. App. 167, ll. 5-7; App. 172, l. 17 – 173, l. 2; App. 226, ll. 7-9; App. 269, l. 2 – 274, l. 20. There were also fibers of black fabric stuck to the wall. App. 260, l. 17 – 261, l. 8.

Importantly, SLED found the splattered substance on the wall was not blood. State’s Exhibit # 53 was the cut-away section from the wall, which had been sent to SLED. App. 178, l. 3 – 179, l. 13. Verona Gibson, who was an evidence processing technician at SLED and who was qualified as an expert in forensics processing, testified that she swabbed State’s Exhibit # 53 and

² Lawter stated during cross-examination that she did not tell her acquaintance Deborah Martinez Ruiz that Petitioner told Lawter he shot Complainant accidentally. App. 439, l. 13 – 442, l. 17. Martinez Ruiz was called as a rebuttal witness and she claimed that Lawter did tell her Petitioner confessed to shooting Complainant in self-defense. App. 629, l. 25 – 631, l. 13. Martinez Ruiz was admittedly mentally ill and heavily medicated. App. 626, l. 18 – 627, l. 20.

tested it for blood, but the test was negative. App. 246, l. 14 – 247, l. 16; App. 252, l. 6 – 253, l.

9. The following exchange took place between the prosecutor and Gibson.

Q. All right. I think what has now been marked State's No. 53; see if you can identify this.

A. Yes, ma'am. This is a section of the wall that I processed.

...

Q. Okay. And your presumptive test on this one?

A. Was negative.

Q. Was negative for blood. Okay.

App. 252, l. 5 – 253, l. 9. To be clear, the splatter on the wall was not blood and it was therefore not Petitioner's blood. Prior to trial, it appears both the prosecution and the defense received the SLED report which showed SLED's analysis found no blood on the wall. App. 984 – 986.

Nevertheless, in her opening statement, the prosecutor claimed Petitioner's DNA was found splattered on the wall at the crime scene. "[T]he person that was the shooter, the person that was shot by Mr. Wooten left behind his DNA. A splatter on the kitchen wall and body tissue and hair, is the DNA of the Defendant, Ronnie Swofford." App. 48, ll. 5-9. (In fact, as seen, only Petitioner's hair was found on the wall and his DNA was found on a bullet jacket on the floor.) In his opening statement, defense counsel did not correct this critical misstatement of fact. Instead, defense counsel agreed, "The blood and tissue that was found in the home of Curtis Wooten belongs to my client, Ronnie Swofford." App. 49, ll. 18-19. During the State's case-in-chief, Sergeant David Weiner testified the kitchen wall appeared to have blood on it. App. 235, ll. 11-15.

After the defense had rested its case, which included Petitioner's alibi witnesses and his innocent explanation about being shot a week prior to the incident, the prosecution recalled

Investigator Chris Miller in rebuttal to testify about the (nonexistent) blood on the wall. Miller had been a police officer for 18 years and a homicide investigator for 5 years. App. 637, ll. 2-5. The prosecutor attempted to qualify Miller as an expert in gunshot and crime scene reconstruction and she asked Miller whether the substance on the wall would still appear red if it had been deposited several days earlier. App. 637, l. 12 – 638, l. 6. While questioning Miller during voir dire, defense counsel stated that one would not need to be an expert to tell if blood was fresh. App. 639, ll. 18-24. Therefore, the trial court did not rule on Miller's qualification and simply told the prosecutor that since defense counsel had conceded one need not be an expert to determine whether blood was fresh, the detective could testify to that. App. 642, ll. 2-4. The prosecutor elicited the following testimony from Miller.

Q. In State's No. 39, the matter that you see as suspected or possible blood, tissue, hair, does that appear to be fresh blood, tissue, hair in your experience?

A. That would be fresh blood, the red.

Q. I need you to say that in the microphone?

A. The blood is red.

Q. And what does that tell you?

A. That it is still fresh.

App. 642, ll. 7-15. State's Exhibit # 39 was a photograph of the red substance splattered on the wall. App. 164, l. 6 – 165, l. 23; App. 178, l. 3 – 180, l. 1. *See* App. 1132. As seen, Verona Gibson of SLED, who tested the wall for blood, had already testified the substance on the wall was not blood.

On cross-examination, defense counsel only asked Miller one question.

Q. Your testimony is that this is fresh because it's still in a liquid state? I'm holding No. 39 in my hand. That's your testimony?

A. Yes, sir.

App. 645, ll. 10-16.

Defense counsel did not address the fact that there was no blood on the wall with Detective Miller, Verona Gibson, or any witness at all. Defense counsel did not argue to the jury that SLED had found there was no blood on the wall. Defense counsel never acknowledged there was no blood on the wall. Instead, in his closing argument, defense counsel said Miller was wrong about the “blood evidence” because fresh blood would be dripping off the wall. App. 654, l. 19 – 655, l. 6. The freshness of the nonexistent blood on the wall was used by the prosecution, to devastating effect, to discredit Petitioner’s alibi defense and innocent explanation that he was shot the week before by Complainant.

In her closing argument, the prosecutor argued the (nonexistent) blood could not have been deposited on the wall days earlier in keeping with Petitioner’s defense since it was still red and fresh. “That’s body tissue and hair and suspected blood would just be on his kitchen wall for six days? And he wants you to say that this is six days old. I don’t think it takes an expert to testify to you that that stuff is fresh, That is fresh body tissue and blood. When blood dries, it turns brown, doesn’t it? It turns a brownish color.” App. 691, ll. 11-17.

The jury deliberated for three hours but it convicted Petitioner of all charges. App. 725, l. 5 – 736, l. 18.

At his PCR hearing, Petitioner testified that defense counsel failed to address the prosecutor’s incorrect claim that Petitioner’s blood was on the wall when it was not.

Ms. Hodge knew that the actual results of this same blood test, and they knew that my blood didn’t exist. And I felt like that since **Mr. Johnston pretty much conceded me being there with this blood in the beginning, never questioning the exerts to refute that ‘hey, this is not his blood.’ And continuing to get in debates with Detective Miller about how fresh the blood is and . . . how**

red the blood is. The solicitor expounded on the same thing . . . she knew it wasn't blood . . . She expounded about how fresh the blood was, How red it was and . . . both attorneys for the State and the Defense knew what did and did not exist and the jury should not have [been told] those things.

App. 812, l. 21 – 814, l. 4 (emphasis added).

At the PCR hearing, defense counsel testified that he did not remember “exactly what all was involved with” the matter of the purported blood splatter. However, defense counsel recalled the prosecutor used a photograph of purported fresh blood splatter on the wall to “refute Mr. Swofford’s claim that he had been shot in the home roughly a week prior.” App. 842, l. 16 – 843, l. 19.

In its order of dismissal, the PCR court found counsel’s representation was not ineffective regarding the purported blood evidence. “Applicant has failed to meet his burden of proving trial counsel should have challenged the blood and hair evidence. While the Applicant argued the blood evidence was not actually blood . . . this Court does not find these arguments persuasive.” App. 864. “The SLED expert witness testified a swab of tissue from the victim’s kitchen floor and a hair taken from the victim’s wall both matched the Applicant. App. 864. “Trial counsel’s defense theory was that this genetic material was from a prior accidental shooting (of the Applicant) at the victim’s house and that he had an alibi for the time when the victim was shot.” App. 864. “In presenting this defense at trial, this Court finds trial counsel properly questioned the State’s expert witnesses and then argued to the jury in closing argument that the State’s forensic evidence was not dispositive. The Applicant has failed to prove trial counsel was deficient.” App. 864. The court further found Petitioner had failed to prove prejudice. App. 866.

As seen, the Court of Appeals dismissed Petitioner's appeal of the denial of PCR based on untimely service of the notice of intent to appeal. After Petitioner filed a second PCR application, that PCR court granted Petitioner belated appellate review pursuant to *Austin*.

This petition for writ of certiorari pursuant to *Austin v. State* follows.

ARGUMENT

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

Defense counsel's failure to respond to the prosecution's factually incorrect claim that Petitioner's blood was splattered on the wall of Complainant's home was ineffective assistance of counsel. The State's forensic expert from SLED testified there was no blood on the wall. App. 252, 1. 5 – 253, 1. 9. It appears that prior to trial both the prosecution and the defense had received the SLED report which concluded there was no blood on the wall. App. 984 – 986. Nevertheless, the prosecutor argued that Petitioner's fresh blood was splattered on the wall, and she elicited from Investigator Miller that there was "fresh" blood on the wall. Counsel never corrected these misstatements, and, in fact, he conceded Petitioner's blood was present. The prosecutor used the nonexistent blood evidence to devastating effect in nullifying Petitioner's alibi.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); U.S. Const. am. VI. A two-pronged test for determining effective assistance of counsel was set forth in *Strickland*. The first prong requires an applicant show that counsel's performance was deficient; the second prong requires a showing that the deficient performance prejudiced the applicant to the extent there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The PCR court's finding of effective representation here was error. *See Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018) (We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. We review questions of law de novo). The State argued Petitioner's fresh blood was splattered on the wall, an argument that, if believed, negated Petitioner's alibi defense. The prosecutor elicited from her own expert witness that the witness tested the wall for blood and the test was negative. App. 252, l. 5 – 253, l. 9. The claim that Petitioner's fresh blood was on the wall was factually incorrect. At best, there was an inference that Petitioner's blood was on the bullet jacket (which was on the floor and was not tested for blood) since his DNA was on the jacket. However, any DNA on the jacket was not wetly splattered on the wall effectively negating Petitioner's defense.

Counsel had valid objections he could have made to the prosecutor's elicitation from Investigator Miller that there was "fresh," "red," "blood" on the wall and from her elicitation from Sergeant Weiner that there appeared to be blood on the wall. Counsel could have objected under Rule 403, SCRE, since the evidence was likely to mislead the jury. Counsel could have objected to facts not in evidence. *See, e.g., State v. Tyner*, 273 S.C. 646, 654–55, 258 S.E.2d 559, 564 (1979) (trial court properly sustained objection to question that assumed facts not in evidence). Counsel could have objected on due process grounds, since "the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio v. United States*, 405 U.S. 150, 153 (1972) (quoting *Mooney v. Holohan*, 294 U.S. 103, 112 (1935)) (internal quotations removed); U.S. Const. am. XIV. *See also Washington v. State*, 324 S.C. 232, 235, 478 S.E.2d 833, 835 (1996) (even where it does not solicit false evidence, State may not allow it to go uncorrected when it appears). Counsel also had valid objections to the prosecutor's argument about the "blood." Counsel could have objected on the grounds that the argument was

not confined to the evidence and reasonable inferences from the evidence. *See State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) (solicitor's closing argument may not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it).

Counsel could have moved to strike and asked for a curative instruction. Counsel could have moved for a mistrial. *See State v. Crim*, 327 S.C. 254, 257, 489 S.E.2d 478, 480 (1997) (instruction to disregard objectionable evidence usually is deemed to have cured the error in its admission unless on the facts of the particular case it is probable that notwithstanding such instruction the accused was prejudiced); *State v. Makins*, 433 S.C. 494, 500, 860 S.E.2d 666, 670 (2021) (trial court has discretion to grant a mistrial when prejudice can be removed in no other way). However, instead of clarifying that Petitioner's blood was not on the wall, counsel conceded Petitioner's blood was at the scene during argument and counsel quibbled with Investigator Miller over the freshness of the nonexistent blood.

Counsel's failure to challenge the incorrect assertions that there was blood on the wall and that it was fresh was not strategic. Counsel presented a defense that Petitioner had an alibi and that any of his DNA left at the scene was left a week earlier when Petitioner was shot by Complainant. Petitioner's fresh blood being on the wall was inconsistent with this defense. Counsel could have effectively represented Petitioner if he had pointed out to the jury that there was no blood on the wall and therefore it could not be fresh.

Because no objections were made to this presentation of factually incorrect evidence and improper argument, the testimony was not stricken. No curative instructions were given. The jury was not instructed to disregard the improper argument. Additionally, the judge did not

instruct the jury that the attorneys' arguments were not evidence. Nevertheless, the jury deliberated for three hours.

Counsel's deficient performance was devastatingly prejudicial to Petitioner. "In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 695-96). "In addition, the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury." *Id.* The prosecutor elicited incorrect testimony from Detective Miller and Sergeant Weiner that there was blood on the wall. Detective Miller was a highly experienced police officer and homicide investigator and he said the "blood" looked "fresh," which surely would have been compelling to the jury. In contrast, the testimony that there was no blood on the wall came out during complicated testimony about multiple exhibits where the prosecution and its witnesses referred to single exhibits using multiple identification numbers. "DNA evidence is well known as a powerful and accurate evidentiary tool for the State to solve crimes and obtain convictions. Nevertheless, DNA evidence has also come to be known for its potential to confuse and mislead jurors." *State v. Phillips*, 430 S.C. 319, 329, 844 S.E.2d 651, 656 (2020).

The failure to object to improper testimony by Sergeant Weiner and Detective Miller prejudiced Petitioner. The impact of these errors was to allow the jury to believe that Petitioner's defense was invalid because if he had been home at the time of the shooting like he claimed, his fresh blood would not have been on the wall. Petitioner has demonstrated *Strickland* prejudice as to these errors alone and he should be granted a new trial. *Strickland*, 466 U.S. at 695-96.

In *Phillips*, *supra*, this Court concluded that misstatements and wrong statements by the solicitor and SLED analyst about complicated DNA concepts required a new trial, especially

where solicitor's incorrect statements in closing argument all but guaranteed the jury was confused and misled. *Phillips*, 430 S.C. at 342, 844 S.E.2d at 663. Here, the manner in which the correct testimony about the actual evidence came out was confusing and the prosecutor's misstatements during closing argument all but assured the jury was confused and misled.

The prosecutor's improper argument provides an additional basis which supports granting post-conviction relief. "A review of a solicitor's closing argument is based upon the standard of whether his comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004); *see also Tappeiner v. State*, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016). The presentation of false evidence results in a trial that offends due process because such is incompatible with the rudimentary demands of justice. *Giglio v. United States*, 405 U.S. at 153. The prosecutor's argument that Petitioner's fresh blood was on the wall was factually incorrect and it capitalized on misstatements of fact by Detective Miller and Sergeant Weiner that there was blood on the wall. The comments impugned Petitioner's alibi, which was testified to by two witnesses who were home with him and corroborated by two others who saw him heading home and arriving home. Petitioner provided an innocent explanation for the actual forensic evidence found. There is a reasonable likelihood the result of the trial would have been different had counsel properly responded to the improper argument.

Counsel failed to challenge the incorrect testimony and argument that Petitioner's fresh blood was on the wall when there was actually no blood on the wall. The (nonexistent) presence of Petitioner's fresh blood decimated his alibi defense. Petitioner has proven error and prejudice. *Strickland*, 466 U.S. at 686; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari pursuant to *Austin v. State* and permit full briefing on the issue presented.

s/ Joanna K. Delany

Joanna K. Delany
Appellate Defender
S.C. Bar No. 76081

ATTORNEY FOR PETITIONER

This 11th day of July, 2022.

RECEIVED

Jul 11 2022

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Petition for Writ of Certiorari pursuant to Austin v. State complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

s/ Joanna K. Delany

Joanna K. Delany
Appellate Defender
S.C. Bar No. 76081

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

This 11th day of July, 2022.

ATTORNEY FOR PETITIONER



RECEIVED

Nov 28 2022

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

November 27, 2022

The Honorable Patricia A. Howard
Clerk – South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211
By email only to suptcfilings@sccourts.org

Re: *Ronnie C. Swofford v. State of South Carolina*
Appellate Case No. 2021-001436

Dear Ms. Howard:

The State's return to the petition for writ of certiorari in the above-referenced appeal is due to be serve and filed tomorrow. Whether the PCR court was correct to grant relief to Mr. Swofford under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), is the only issue raised in the petition. The State conceded below that Mr. Swofford was entitled to the relief granted to him by the PCR court. As such, the State does not intend to file a return to the petition. Please accept this letter in lieu of a formal return. If a more formal response is required, please let me know.

Sincerely,

s/Taylor Zane Smith
Taylor Z. Smith
Assistant Attorney General
S.C. Bar#103282

cc: Joanna K. Delany, Esquire (by email only)

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

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

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

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

JOANNA K. DELANY
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ATTORNEY FOR PETITIONER

RECEIVED

Dec 07 2022

S.C. SUPREME COURT

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ARGUMENT

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

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

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

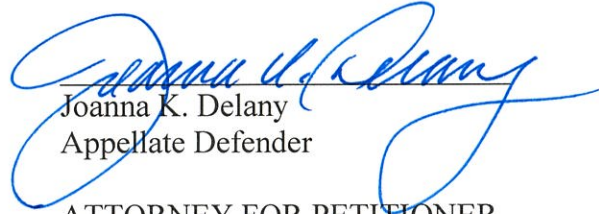
The State argues in its return that Petitioner has “failed to prove that the solicitor's witness examination and closing argument were intentionally misleading.” State's return at 22. Petitioner is arguing the solicitor made “factually incorrect” claims in her closing argument and through her witness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

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

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

CONCLUSION

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


Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of December, 2022.

RECEIVED

Dec 07 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Greenville County

The Honorable Edward W. Miller, Trial Judge
The Honorable Perry H. Gravely, PCR Judge

Appellate Case No. 2021-001436

RONNIE C. SWOFFORD,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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

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STATEMENT OF ISSUE ON CERTIORARI

PETITIONER'S ISSUE PRESENTED

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

RESPONDENT'S COUNTERSTATEMENT OF ISSUE

Did the PCR court correctly deny the application when Petitioner has failed to prove that there is a reasonable likelihood that the outcome of his trial would have been different had trial counsel ensured that it was clear that the State did not find any evidence that Petitioner's blood was on the victim's kitchen wall?

STATEMENT OF THE CASE

Petitioner Ronnie C. Swofford, Jr., is presently imprisoned in the South Carolina Department of Corrections. On May 14-17, 2012, Petitioner proceeded to a jury trial with the Honorable Edward W. Miller, (“trial court”) presiding for the following charges: first-degree burglary (2009-GS-23-09403), assault and battery with the intent to kill (2009-GS-23-09404), assault with intent to kill (2011-GS-23-07263), possession of a weapon during the commission of a violent crime (2009-GS-23-09404), and possession of a pistol by a person convicted of a violent crime (2009-GS-23-09405). Andrew J. Johnston and Gerald G. Wilson represented him at that trial. The jury convicted Petitioner as indicted. The trial court sentenced him as follows: for first-degree burglary, to imprisonment for life without the possibility of parole; for assault and battery with the intent to kill, to imprisonment for life without the possibility of parole; for possession of a pistol by a person convicted of a violent crime, to imprisonment for five years; and for assault with intent to kill, to imprisonment for ten years.

Petitioner’s lawyers filed a timely notice of appeal. The South Carolina Court of Appeals dismissed his direct appeal at his request by an order issued on June 28, 2013, after he unsuccessfully moved to relieve as his counsel LaNelle C. DuRant of the South Carolina Commission on Indigent Defense. The remittitur was issued on July 24, 2013. Petitioner filed a pro se motion for a new trial based on after-discovered evidence on July 23, 2013. His motion was denied by the Honorable Letitia H. Verdin on December 9, 2013. Judge Verdin also denied his subsequent motion to reconsider. Petitioner filed a notice of appeal, and the Court of Appeals later dismissed that appeal on June 23, 2014, at Petitioner’s request. The remittitur was issued on July 9, 2014.

On July 8, 2014, Petitioner filed an application for post-conviction relief (2014-CP-23-3763). On October 21, 2015, an evidentiary hearing was convened at the Greenville County Courthouse before the Honorable Perry H. Gravely (“PCR court”). The PCR court denied the application with prejudice in an order issued on December 30, 2015. On February 2, 2016, Petitioner moved to alter of amend the judgment pursuant to Rule 59(e), SCRCP, and some pro se filings from Petitioner were attached to that motion. Respondent filed a return to the motion, arguing that the motion should be “dismissed” because it was a mere conduit for Petitioner’s pro se filings, and thereby prohibited as hybrid representation, and because the PCR court had properly and fully reviewed and ruled upon all issues. In an order issued on February 17, 2016, the PCR court denied Petitioner’s motion.

On March 3, 2016, Petitioner’s counsel served a notice of appeal, which was filed with this Court on March 10, 2016. Deputy Chief Appellate Defender Wanda H. Carter of the Commission on Indigent Defense filed a petition to be relieved as counsel and a petition for a writ of certiorari pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), arguing that one of Petitioner’s trial lawyers had erred in admitting during his opening statement that Petitioner’s blood had been found at the crime scene because no blood evidence “within its traditional meaning” had been found at the scene. Petitioner filed a pro se *Johnson* petition, raising multiple arguments. The Court of Appeals dismissed the appeal, finding that Petitioner’s PCR lawyer had not timely served the notice of appeal from the PCR court’s denial of relief when he filed a motion for reconsideration outside of the required ten-day window, which then did not toll the deadline for filing a notice of appeal.

This successive application for post-conviction relief followed. The Honorable G. D. Morgan, Jr., granted the application with Respondent's concession to the claim raised pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 392 (1991), and granted Respondent's motion to dismiss as to all other claims. This appeal follows.

STATEMENT OF FACTS

Curtis Wooten ("the victim") met Petitioner 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 they 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 at that point, 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 that he lent about \$750 to Petitioner 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, though, Petitioner set up meetings with the victim by text message and then failed to keep them. App. 68-69.

Sometime after 2:00 a.m. of the morning following the night at which Petitioner was supposed to repay the victim, the victim returned to his home after having gone to the grocery store. App. 69-70, 86. Petitioner 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, 125-27. 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 she did so. App. 71. He shot the intruder once with a pistol, and the intruder fled. App. 71-72. He called 911 and he and Edwards drove to the hospital, with Edwards making a call to 911, too, once they were on their way. App. 74-75, 83.

The victim recognized the intruder. App. 71. He told a law enforcement officer at the hospital that Petitioner shot him and about the pistol that Petitioner 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 Petitioner as the shooter. App. 112-13. He testified that Petitioner was the intruder and that the pistol that Petitioner used had been the same one Petitioner had shown to him the day before the shooting. App. 85-87. He recognized Petitioner’s voice when Petitioner called out his name before shooting him. App. 131. He assumed that Petitioner had shot him to take his money. App. 86. On cross-examination, he agreed that 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. 122-24. He also admitted that he had taken 75 milligrams of

¹ The victim clarified that he could not tell that the pistol that Petitioner was using during the shooting was a .40 caliber one, but he recognized Petitioner and saw that Petitioner was holding a Hi Point, and made an assumption that it was the same .40 caliber Hi Point that Petitioner had shown him the day before. App. 127.

methadone about fifteen hours before the shooting, but denied that he had been taking any other medications at the time. App. 129-30.

Sergeant David Hayes of the Greenville County Sheriff's Office responded to Wooten's 911 call, arriving at the hospital at approximately 2:45 a.m. on the morning of the shooting. App. 142-43. Sgt. Hayes was able to speak briefly with Wooten at the hospital, and Wooten told him that an unknown assailant in dark clothing entered his home and started shooting at him, and then identified Petitioner as the shooter, explaining that Petitioner owed him money. App. 143-44. Wooten told Sgt. Hayes that he was not "totally certain" that Petitioner was the intruder, but said that Petitioner owned the .40 caliber handgun used to shoot him. App. 144. Wooten 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 of his colon removed, underwent a tracheostomy due to his going into respiratory failure, and had to have his abdomen kept open for multiple days; additionally, Wooten suffered complications from his injuries, like having open wounds that needed tending, getting infected with a fungus in his blood stream, and developing pneumonia. App. 136-39.

Officer John Derby of Greenville County Forensics went to Wooten's home to collect evidence. App. 151-53. Officer Derby collected three spent cartridge casings on the floor. App. 160, 168, 189. Officer Derby located a projectile hole in the wall in Wooten's kitchen and was able to recover a projectile and a projectile jacket from the area underneath a kitchen cabinet. App. 162-64. 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.

173-74. 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. 226-27. Officer Derby found what appeared to be a wad of fabric next to the projectile hole, and noted that the area around the hole had “stains” that he did not see appearing anywhere else on the wall. App. 164-65. He cut away that section of the wall so that he could collect it for the investigation due to the fact that that section contained “suspected blood” and fabric that could be seen on it. App. 165-66, 177-78. Officer Derby testified that he determined that 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 see if he could further the investigation. App. 198-203. Sgt. Shaw went to the scene with the portion of wall that 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 that there was another projectile hold leading from the kitchen wall into a 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-

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. 230-31.

14. He testified that the fact that this projectile was still jacketed indicated that 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 4:00 a.m. on the morning of the shooting. App. 233-34. He observed that there was 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 that 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, 241-42. He called the number for "Ronnie," but received no response until Petitioner returned his call two days later, at which point Petitioner admitted that he had been communicating with the victim that night, but said that 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. 237-39, 306.

Verona Gibson, an evidence processing technician in the DNA Department at the South Carolina Law Enforcement Division ("SLED"), testified that 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 from it. App. 246, 252. The test was negative for the presence of blood. App. 253. Ila Simmons, a trace evidence examiner at SLED, determined that 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 Petitioner. App. 265-70. She determined that the two DNA profiles matched, and that the probability of randomly selecting an unrelated individual with a matching DNA profile was approximately one in 24 quadrillion. App. 270-71. She also determined that the DNA profile of the hair collected from the wall cutout matched Petitioner’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 that 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 Petitioner using the phone number with which Sgt. Weiner had done so, but Petitioner never called him back. App. 306-07. He sent to SLED for blood DNA analysis, among other things, a swab from the projectile found on the floor of the victim’s kitchen. App. 311. He tried again to make contact with Petitioner by going to his residence. App. 314-16. He secured arrest warrants for Petitioner after SLED’s preliminary analysis showed that Petitioner’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 Petitioner on various metal fabrication jobs for about two to three years prior to the shooting, but he probably went to high school with Petitioner and had known him for about twenty years before

he started working on Petitioner's fabrication jobs. App. 363-65. He agreed that he had been friends with Petitioner for some years. App. 370-71. He testified that, when Petitioner was working with him on then July 22, he noticed that Petitioner's arm was injured and covered with a gauze bandage, which looked as if it had been put on by Petitioner himself. App. 369-70. He said that the wound was on Petitioner's left arm and it consistent of two pierce marks that looked as if something had passed through the arm. App. 370. Petitioner told him that he had gotten the injury when a friend's gun had discharged. App. 372-73. He did not know what Petitioner was doing in the early morning hours of July 22. App. 373.

Petitioner's mother Phyllis Swofford testified that Petitioner's birthday is on July 25. App. 374. She noticed a bandage on Petitioner's left arm on July 23, and described the bandage as a "band-aid." App. 377-79. 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 Petitioner's pressure washing wand. App. 378-79. On cross-examination, she testified that she knew that Petitioner had had "the place" on his arm on July 23, and then said after a follow-up question from the solicitor that Petitioner had two "places" on his arm. App. 385. She agreed that she had not told law enforcement officers or the solicitor about her recollection of the injury to her son's arm before trial, even though she had learned that that 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. 383-86.

Charlie Duffie testified as a defense witness, saying that he had known Petitioner since they worked together in the late 1980s and that he and Petitioner had become "fairly close" friends

over the past seven or eight years.³ App. 390-91. He later agreed that he and Petitioner were “real close.” App. 396. He testified that he noticed a bandage on Petitioner’s left arm on July 23 when they were celebrating Petitioner’s birthday. App. 391-93. He said that the bandage consisted of two band-aids, one on the front of Petitioner’s forearm and another on the rear. App. 393. He testified that Petitioner 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 that he learned immediately after Petitioner was arrested that the injury to Petitioner’s arm was significant, but he did not go to police with that information at any point because he did not think that the fact that he knew that Petitioner had suffered an arm injury before the shooting at issue was relevant and because he figured that Petitioner and Petitioner’s lawyer would come to him if they had questions about it. App. 397-99. He did not know Petitioner’s location in the early morning hours of July 27, 2009. App. 399.

Lawter testified that she and Petitioner had been in a relationship with Petitioner for six years, and that she and Petitioner 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 that Petitioner’s birthday is July 25, and that she was with Petitioner at a birthday meal for him at a Japanese restaurant on July 25, 2009. App. 406-08. She said that she first noticed an injury to

³ The solicitor’s investigator reported during trial that he had seen Petitioner’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. 400-04.

Petitioner's left arm around July 22, testifying that she saw "a place" on the arm. App. 408-10. She described it as appearing as a burn or a graze wound. App. 410. She testified that Petitioner had arrived home from work at about 1:30 a.m. on July 27, 2009, and that it was not unusual for Petitioner to get home from work early in the morning. App. 413-14. She said that Petitioner did not leave once he arrived at home, until he left to go to Charlotte that same morning at about 6:00 a.m. App. 416-17. She said that she told the law enforcement officers who came to the house investigating the shooting that Petitioner had not been shot because she thought that the injury looked like a burn. App. 418-19. She testified that she told Petitioner that the officers had come to the home to ask to speak to him, and that Petitioner told her that he did not know why they were looking for him. App. 426-27. Petitioner was still driving her to work and she admitted that she would experience financial hardship if he were to go to prison. App. 424-25. She said that Petitioner told her initially that he had injured his arm on a lawn mower. App. 428-29. 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 that Petitioner later told her that the victim had accidentally shot him on July 21 and that he had not reported it to the police so that 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. 445-47. She explained her statement to officers that Petitioner 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 that she told her former neighbor Deborah Martinez that Petitioner 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 that she told Martinez that Petitioner told her details about the shooting. App. 442. She also

denied that she told Martinez that she would lie for Petitioner at his trial. App. 442. She denied sending text messages to Stephen Parham saying that he needed to be at Petitioner's trial. App. 443. She denied that she and Petitioner had discussed what they would say while on the witness stand at trial, but later admitted, at least to some extent, that she had discussed the case with Petitioner. App. 443, 447-48.

Lawter's son Jordan, and Petitioner's step-son, testified, too, and said that Petitioner was like his father. App. 449. He testified that Petitioner was in Petitioner's bedroom at 2:20 a.m. on July 27, 2009, and that he went to Charlotte with Petitioner later that morning at 6:00 a.m. App. 452-53. He said that he saw a bandage on Petitioner's arm when they went to Charlotte, but he did not know the details of Petitioner's injury. App. 459. Jordan still lived with Petitioner. App. 455. He said that he did not tell the officers when they showed up to arrest Petitioner that Petitioner 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. 461-62. He agreed that he wanted Petitioner 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 Petitioner for twelve or thirteen years, or maybe more; Petitioner testified that he met Pullen when they were both imprisoned together. App. 463, 603-04. He said that he saw Petitioner's vehicle drive by him at about 1:15 a.m. on July 27, 2009, and he called Petitioner and had a phone conversation with him. App. 465-68. He put that phone call between 1:30 and 1:35 a.m. App. 469. He said that he did not share his information with officers even though he was aware that Petitioner had been arrested. App. 471-72. He did not know Petitioner's location at the time of the shooting. App. 472.

Stephen Parham, who has a learning disability and is Martinez's son and Petitioner's

former neighbor, testified that he is friends with Petitioner. App. 472-73, 482, 628. He claimed to have talked to Petitioner right outside Petitioner's home at 1:36 a.m. on July 27, 2009, and that Petitioner went inside his house afterwards and did not leave again. App. 478-79. 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. 481-82. He admitted that he told the solicitor's investigators the week before trial that he was not "100 percent certain" that Petitioner had gone into his house that night. App. 482. When he met with trial counsel, Petitioner had driven him to the appointment and bought him breakfast along the way, and told him that, when the case was over, he and Petitioner would "hang out together, catch up on lost time," and that Petitioner would get a gym membership and show him how to work out. App. 483. He agreed that Petitioner had shown his entire case file to him and said that he wanted him to testify that he saw Petitioner 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. 486-87. He agreed that he had started to feel as if Petitioner had been trying to manipulate him in order to get him to say certain things. App. 487.

Petitioner's brother James B. Swofford testified that he was at the Japanese restaurant with Petitioner and others on Petitioner's birthday. App. 497-98. 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 Petitioner's arm. App. 499.

Petitioner testified in his own defense. After admitting to a redacted version of his own criminal record, Petitioner testified that he became friends with the victim in prison and then reconnected with him on the outside. App. 500-18. He testified that the victim had exaggerated the number of times on which they met, though. App. 520-22. 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, 549-50, 594. He said that he stopped by the victim's home on July 21, 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. 532-42. 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.

Petitioner said that he originally told Lawter that he had injured his own on the lawnmower and that he told the version from his trial testimony with her right before he had been arrested. App. 544-45. Petitioner testified that he went to his birthday dinner on July 25, and that the photographs taken there show the injury to his arm and that others saw his injury. App. 552-53. 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 12:05 a.m., dropped an employee off at the employee's home at 12:35 a.m., received a call from

Pullen, arrived at home at 1:35 a.m., and stayed there until 5:55 a.m. App. 557-65. 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. 566-67. He denied that he shot the victim. App. 569.

Petitioner testified that, when he saw his AIDS counsellor on July 21, his counsellor did not raise concerns about the bandage on his arm and told him later that he had not noticed the bandage. App. 576-78. 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. 582-83. 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 Petitioner 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. 590-91. 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. 615-18.

Martinez testified during the State's case-in-reply that she was Petitioner's and Lawter's

neighbor. App. 625. She testified that Lawter had visited her in February of 2019 after having had an argument with Petitioner and said that Petitioner told her that he had shot the victim in self-defense, and that Lawter said that she did not want to testify against Petitioner because they had a son together and that she would not say in court what Petitioner had told her. App. 629-33.

Inv. Miller also took the stand again. He testified that Petitioner's witnesses had not told him the things about which they testified. App. 635-36. 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. 639-42. 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 Petitioner'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 Petitioner's blood on the wall before the victim gave his written statement. App. 654-55, 665. The solicitor argued that Petitioner'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 Petitioner at the crime scene. App. 691, 703. The jury found Petitioner guilty as indicted on all counts, and the trial court issued the mandatory life sentences. App. 725-26, 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*, 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)). The PCR court's findings regarding prejudice are based on a thorough review of the record as a whole and, accordingly, are inherently fact-based and must be afforded deference by a reviewing appellate court. See *Briggs v. State*, 421 S.C. 316, 334, 806 S.E.2d 713, 723 (2017) ("The PCR court found the case 'came down to the victim's believability and credibility.' The PCR court found the most damaging testimony to Briggs . . . was not reliable because [the witnesses'] 'credibility is highly suspect.' Finally, the PCR court found 'there is a reasonable probability that the result of the Applicant's trial would have been different' if Singleton had not allowed Arroyo-Staggs to improperly bolster the victim. Giving to the factual findings by the PCR court the deference we are required by law to give, we affirm the court's finding that Briggs proved prejudice, satisfying the second prong *Strickland*."). However, pure questions of law will be reviewed de novo without deference to the lower court. *Smalls*, 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 PCR court was correct to deny the application because Petitioner has failed to prove that there is a reasonable likelihood that the outcome of his trial would have been different had trial counsel ensured that it was clear that the State did not find any evidence that Petitioner's blood was on the victim's kitchen wall.

Trial counsel was the first person to tell the jury that Petitioner's blood was on the victim's kitchen wall. The solicitor said in her opening statement that the intruder left behind "[a] splatter on the kitchen wall and body tissue and hair," and that the DNA matched Petitioner's. App. 48. She did not say then that Petitioner's blood was on the wall; in fact, she did not reference Petitioner's blood at all at that time. It was trial counsel who said in his opening statement that the blood and tissue found at the scene belonged to Petitioner, and said that it would be the meaning of their presence that would make the difference. App. 49. During the State's case-in-chief, the victim testified that he had been informed that the projectile found inside his wall had Petitioner's blood on it and, responding to a question from trial counsel, testified that he may have heard about the blood before giving his written statement. App. 133-34. Officer Derby and Sgt. Weiner were careful to say that the substance on the wall appeared to be blood, was suspected blood, or possibly was blood; at that point, no forensic analysis had been performed in order to know the true makeup of the substance. App. 177-78, 196-97, 235. SLED Agent Gibson then clarified that the swabbed portion of the wall tested negative for the presence of blood. App. 252-53. Inv. Miller then, when describing the victim's kitchen upon his arrival, testified that blood and tissue were splattered on the wall. App. 302. Petitioner conceded during his testimony that his blood may have been in the victim's home due to the fact that he had been shot while there. App. 543, 591. The solicitor then asked Inv. Miller if the suspected blood in a photograph of the victim's wall appeared to show fresh blood, and he testified that the blood was fresh, and explained on cross-examination that it

looked fresh because it appeared to be a liquid and not a dried substance. App. 640-42. Then the parties addressed the issue again in closing.

In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). 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*). Petitioner argues that trial counsel should have objected to the solicitor's examination of Inv. Miller regarding the "fresh" blood on the wall and of her examination of Sgt. Weiner about his observation that there was blood on the wall when he was in the kitchen. Sgt. Weiner was explicitly testifying about his visual observations at the scene, and it was clear from his testimony that he was describing what *appeared* to him be blood. Apparently, the substance on the wall did look like blood and Sgt. Weiner would not have known otherwise at that point in the investigation, so there was nothing improper about his qualified description. The fact that even trial counsel and Petitioner seem to have conceded that the substance looked like blood mitigates any reason to think that the witnesses' descriptions of the substance as blood were insincere; in fact, trial counsel offered a reasonable explanation that, at some points in the trial, the technical terms for the biological substances found at the crime scene may have been used interchangeably. It is unclear from the record if the photograph that Inv. Miller was looking at when he testified about the freshness of the blood depicted the substance that the SLED agents had tested or if it depicted some other substance on the wall that was not specifically identified in a way that would be illuminating to one studying the trial transcript. For that reason, Petitioner has

failed to prove that the solicitor's witness examination and closing argument were intentionally misleading. Admittedly, though, it does seem as if the lawyers on *both* sides conducted themselves at trial as if the substance on the wall was blood—and Petitioner's blood at that—despite the SLED agent's testimony that the wall swab had tested negative for the presence of blood.

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. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, 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 PCR court correctly found that Petitioner failed to prove that he suffered prejudice from his lawyer's performance. App. 866. Regardless of their exact locations in the victim's kitchen, samples of DNA found in the kitchen matched Petitioner's DNA. The State's DNA expert matched Petitioner's DNA to a sample taken from a projectile collected from the floor of the victim's kitchen and to a hair taken from the victim's kitchen wall. Even if trial counsel had prevented all references at trial to the blood-like substance on the wall, there would have remained overwhelming evidence that Petitioner had been in the victim's home and that he had been shot there with a .380 caliber firearm.

The greatest challenge to Petitioner's defense was that he had to contend with the victim's identification of him as the intruder while also explaining away the gunshot wound in his arm. This challenge would have been present even if trial counsel and the solicitor had not conducted

the trial as if Petitioner's blood was present on Petitioner's wall. Petitioner has not proven that there is a reasonable likelihood that but for any deficiency in trial counsel's performance for trying the case as if Petitioner's blood was on the victim's wall that the jury's verdict would have been any different. First, Petitioner's witnesses' stories about his actions on the night of the shooting and about his explanations for his injury were not credible. Petitioner's first witness had known him for about twenty years and had been his friend for some years, and had also worked for Petitioner on fabrication jobs. Petitioner's next witness was his mother, who gave a description of the dressings on Petitioner's alleged wounds that differed from his own, who gave a non-credible explanation for her not telling law enforcement officers of the existence of Petitioner's wound before the crimes at issue in the case, and who had impeachable criminal convictions on her record. Petitioner's third witness was a man who had known Petitioner for decades and been close friends with him for almost a decade, who gave a description of Petitioner's wound dressing that differed from Petitioner's own, who gave a non-credible explanation for his pre-trial silence about the timing of Petitioner's alleged arm wound, and who had impeachable criminal convictions on his record. Petitioner's fourth witness was his ex-girlfriend and mother of his child, who gave a non-credible explanation for her pre-trial silence about the alleged wound on Petitioner's arm, whose testimony was cast in doubt by (among other things) another witness's rebuttal testimony that the girlfriend had talked about an incriminating statement made by Petitioner and had said that she would not reveal the truth of the matter at trial, who had made threatening statements to another of Petitioner's witnesses in an apparent attempt to secure his favorable testimony for Petitioner, and who had an impeachable criminal conviction on her record. Petitioner's fifth witness was his step-son who gave non-credible testimony about the reason that he did not inform officers of the

alleged wound on Petitioner's arm and who testified that he would do whatever he could to help Petitioner. Petitioner's sixth witness was someone who had known Petitioner for a long time, who had at least one criminal conviction serious enough to justify a prison sentence, and who gave non-credible testimony that he did not inform officers that he had seen Petitioner on the night of the shooting for which Petitioner had been arrested. Petitioner's seventh witness was a special needs young man who backtracked his alibi testimony while on the stand and ended up testifying that his initial testimony had been a recitation of what Petitioner wanted him to say, that Petitioner's girlfriend had communicated with him in advance of trial about his testimony in a way that made him feel threatened, that he felt that Petitioner was trying to manipulate him, and that he felt scared to testify against Petitioner.

Second, Petitioner's testimony that he did not seek medical attention for or report the alleged accidental shooting because he wanted to protect the victim and because he did not think the wound serious enough was absurd. Petitioner downplayed his relationship with the victim to the extent that it is not believable that he would have felt such loyalty to the victim that he would have tried to conceal the alleged accidental shooting. And Petitioner, who has AIDS, would not have merely rinsed his arm with a garden hose and doctored it up himself with veterinarian supplies from home that was meant for dogs had he not had some personal reason for the wound to go undetected, like needing to avoid law enforcement scrutiny following the attempted murders of the victim and Edwards.

Third, the jury could not have accepted Petitioner's contention that days went by between the alleged accidental shooting and the shooting at issue in the case while the biological matter

that Petitioner left behind in the victim's kitchen was undisturbed and still useful for forensic analysis.

CONCLUSION

Even if there had been no errant testimony or arguments at trial that suggested that Petitioner's blood was on the victim's kitchen wall, Petitioner has failed to prove that there is a reasonable likelihood that his parade of criminals, family members with absurd testimony, and a coerced and impressionable witness would have been able to rebut the State's evidence such that the jury's verdict would have been any different. The PCR court was correct to deny the application and this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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December 7, 2022

The South Carolina Court of Appeals

Ronnie Cleveland Swofford, Jr., Petitioner,

v.

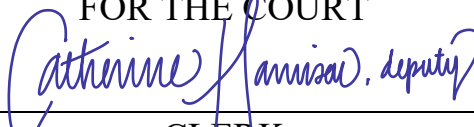
State of South Carolina, Respondent.

Appellate Case No. 2021-001436

ORDER

Petitioner's application for post-conviction relief was denied by Judge Perry H. Gravely. No timely notice of appeal was filed. Petitioner now seeks a writ of certiorari from an order issued by Judge G. D. Morgan granting Petitioner a belated review of Judge Gravely's order pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

The panel voted to grant the petition for a writ of certiorari from Judge Morgan's order, dispense with further briefing, and conduct an *Austin* review of Judge Gravely's order. Based on the vote of the panel, the petition for a writ of certiorari from Judge Gravely's order is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

FOR THE COURT
BY  deputy
CLERK

Columbia, South Carolina
March 21, 2024

cc:

Joanna Katherine Delany, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire

The Honorable Perry H. Gravelly
The Honorable G. D. Morgan, Jr.

RECEIVED

Jul 22 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

BRIEF OF PETITIONER

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ISSUE PRESENTED

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

STATEMENT

During the November term of 2009, a Greenville County Grand Jury indicted Petitioner, Ronnie Swofford, for first-degree burglary, assault and battery with intent to kill, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person convicted of a violent crime. During the September term of 2011, a Greenville County Grand Jury indicted Petitioner for assault with intent to kill. App. 1147 – 1154. Petitioner was tried before the Honorable Edward W. Miller from May 14 – 17, 2012. Petitioner was represented by Andrew Johnston and Gerald Wilson. Kris Hodge prosecuted the case. App. 1. The State sought a life without parole sentence for two of the offenses pursuant to S.C. Code Ann. § 17-25-45 based on Petitioner's prior convictions. App. 728, l. 25 – 729, l. 22.

Petitioner was convicted as indicted. App. 725, l. 23 – 726, l. 18. The court sentenced him to life without parole for first-degree burglary, life without parole for assault and battery with intent to kill, ten years for assault with intent to kill, and five years for possession of a pistol by a person convicted of a violent crime. The court did not impose a sentence for possession of a weapon during the commission of a violent crime. App. 725, l. 23 – 726, l. 18.

Petitioner's direct appeal was dismissed by this Court at his request on June 28, 2013. App. 733 – 736. Petitioner then filed a motion for a new trial based on after-discovered evidence based on the discovery of potential trial witness Terry Stevens.¹ See App. 737 – 740. On December 9, 2013, the circuit court issued an order denying Petitioner's motion. App. 741 – 745. Petitioner's appeal of the order denying his motion for a new trial based on newly-discovered evidence was dismissed by this Court at his request on June 23, 2014. App. 752 – 753.

¹ Undersigned counsel was unable to obtain Petitioner's motion for a new trial based on after-discovered evidence; the Greenville County Clerk of Court's Office did not have the motion.

On July 8, 2014, Petitioner filed an application for post-conviction relief (PCR). App. 754 – 761. On January 13, 2015, the State made its return. App. 762 – 768. On October 21, 2015, a hearing was held on the matter before the Honorable Perry H. Gravely. Mills Ariail represented Petitioner. Karen Ratigan represented the State. App. 778. On January 7, 2016, the PCR court issued an order of dismissal. App. 858 – 868. On February 2, 2016, PCR counsel filed and served a motion to alter or amend the judgement pursuant to Rule 59(e), SCRCP. App. 869 – 891. On February 8, 2016, the State made a return. App. 892 – 893. On February 19, 2016, the PCR court denied the motion. App. 894 – 895.

On March 3, 2016, PCR counsel filed and served an untimely notice of appeal of Petitioner’s PCR denial. App. 896 – 897. On September 27, 2018, this Court issued an order dismissing the appeal based on PCR counsel’s failure to timely serve notice of appeal. App. 989.

On November 6, 2018, Petitioner filed a second PCR application seeking appellate review of his PCR denial pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 992 – 1004. On December 13, 2019, the State made its return and partial motion to dismiss. App. 1005 – 1011. A hearing was convened via Webex on November 8, 2021, before the Honorable G.D. Morgan, Jr. Susannah Ross represented Petitioner and Taylor Smith represented the State. App. 1012 – 1063. By order filed November 23, 2021, Judge Morgan granted Petitioner a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 1137 – 1142.

Petitioner filed a petition for writ of certiorari and a petition for certiorari pursuant to *Austin v. State*. The State conceded Petitioner was entitled to a belated appeal, and made an amended return to the petition for certiorari pursuant to *Austin v. State*. Petitioner filed a reply to

the return. On January 5, 2023, the Supreme Court transferred the case to this Court pursuant to Rule 243(l), SCACR. On March 21, 2024, this Court granted certiorari.

This brief of petitioner follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. *Smalls v. State*, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839–40 (2018). The reviewing court must defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them. *Id.* (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, the appellate court reviews questions of law de novo, with no deference to the PCR court. *Id.*

ARGUMENT

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

Introduction

Complainant was shot, and he shot back at his attacker. Complainant told law enforcement that he did not know who shot him. Petitioner admitted he had been shot by Complainant a week earlier, but presented an alibi defense for the night of this incident. The prosecution argued the forensic evidence could not have been left by an earlier shooting, because Petitioner's fresh, wet, red blood was on the wall. However, SLED had found the red substance on the wall of the dirty house was not blood. Defense counsel failed to catch this, and he agreed Petitioner's blood was on the wall when no one's blood was on the wall. The PCR court made the same mistake as trial counsel, and concluded counsel's performance was not deficient because there was no problem with the "blood" evidence. This finding was unsupported by the record. There was no blood on the wall. The PCR court's conclusions of no deficiency and no prejudice, which rested upon this finding, were error.

Relevant facts

Curtis Wooten, Complainant, alleged that at approximately 2:30 a.m. on July 27, 2009, a gunman wearing a ski mask entered his home in Greer just after Complainant walked into the house with groceries. Complainant alleged the gunman called Complainant's name and when Complainant turned, the gunman fired two shots, striking Complainant in the abdomen. Complainant returned fire with one shot from his own gun, striking the gunman. Rikki Edwards,

Complainant's girlfriend, was home during the shooting but she was not hit by gunfire. Complainant and Edwards called 911 and drove to the hospital. App. 63, ll. 12-22; App. 69, l. 15 -77, l. 8. The 911 operator asked if Complainant knew who had shot him and Complainant did not answer. App. 108, ll. 11-20. Police initially suspected Edwards shot Complainant herself. App. 304, ll. 14-24; App. 340, l. 4 – 341, l. 19.

Complainant was badly injured, and ultimately had to be put on a ventilator for some time and have his spleen and a kidney removed, and he suffered other serious problems. App. 137, l. 18 – 139, l. 23. However, Officer Hayes went to the hospital at 2:45 a.m. and was able to talk to Complainant briefly as treatment was being initiated. Officer Hayes asked Complainant if he knew who had shot him and Complainant said no. Officer Hayes then asked Complainant if he knew anyone who would want to do this to him. Complainant replied that he thought Petitioner would do this to him because Petitioner owed him money. Officer Hayes asked if Complainant was certain that Petitioner was the person who shot him, and Complainant said he was not. Nevertheless, Complainant claimed at trial he was 99.9 percent sure Petitioner was the gunman because he saw Petitioner's face through the opening of the ski mask and because he recognized Petitioner's voice. App. 66, l. 21 – 67, l. 17; App. 84, l. 20 – 87, l. 7; App. 111, l. 12 – 115, l. 22; App. 131, l. 5 – 133, l. 11; App. 142, l. 5 – 144, l. 8.

Law enforcement searched Complainant's home for evidence and they found 3 shell casings and a bullet jacket on the floor. They saw a hole in the kitchen wall. A red substance was splattered on the wall around the hole, and they thought it might be blood. App. 156, l. 17 – 165, l. 23. It was not blood. Petitioner would later explain Complainant's home was "dirty and nasty." App. 793, l. 24. Officers collected the casings and the bullet jacket, and they cut out the section of the wall that had the bullet hole and splattered red substance. App. 165, l. 24 – 166, l. 5; App.

177, l. 24 – 179, l. 18; App. 189, l. 9 – 196, l. 13. Officers sent evidence to SLED and asked for a rush on the DNA analysis. Petitioner’s DNA was already in the system and was quickly matched to an unspecified piece of evidence from the scene (possibly the bullet jacket). App. 311, l. 1 – 312, l. 9; App. 316, ll. 15-23. A warrant was sought for Petitioner’s arrest, and he was apprehended a few weeks later with round, scabbed wounds on his arm. App. 319, l. 15 – 321, l. 10; App. 334, ll. 19-22.

Petitioner testified at his trial, and he denied shooting Complainant. App. 569, ll. 19-21. However, Petitioner explained that he himself had been shot by Complainant about a week prior to this incident when Complainant accidentally shot him in the arm while Complainant was intoxicated. App. 531, l. 20 – 540, l. 18. Petitioner presented the testimony of several witnesses who had seen the gunshot wound or had seen his arm bandaged days prior to the incident date. App. 369, l. 7 – 370, l. 21; App. 377, l. 2 – 380, l. 5; App. 391, l. 15 – 394, l. 6; App. 408, l. 21 – 409, l. 23; App. 498, l. 14 – 499, l. 22.

Petitioner also presented an alibi defense. Petitioner presented the testimony of a friend who had seen him driving home the night of the incident, a neighbor who saw him arrive home that night, and the testimony of Petitioner’s fiancée and her daughter who were home with him at the time Complainant was shot. App. 415, l. 9 – 417, l. 12; App. 450, l. 13 – 453, l. 9; App. 463, l. 25 – 469, l. 1; App. 473, l. 10 – 479, l. 14. Petitioner admitted he had prior criminal convictions and he was cross-examined on his failure to explain his defense to law enforcement prior to trial. App. 501, l. 21 – 502, l. 1; App. 615, l. 8 – 617, l. 12. Several of the defense

witnesses had prior criminal convictions. App. 388, l. 22 – 389, l. 2; App. 394, l. 20 – 395, l. 9; App. 419, ll. 4-6. Petitioner’s fiancée, Shannon Lawter, was also impeached.²

SLED analyzed the forensic evidence in this case, and the evidence presented by the State during its case in chief was as follows. An unspecified type of hair from the cut-out section of the wall was found to match Petitioner’s DNA. The hair had tissue attached to the root. A bullet jacket found on the floor which contained suspected blood tissue was swabbed for analysis. The swab was not tested for the presence of blood, but it was tested for DNA. The swab was found to match Petitioner’s DNA. As to both the swab from the bullet jacket and the hair, there was a 1 in 24 quadrillion probability of randomly selecting an unrelated individual having a DNA profile matching these items. App. 167, ll. 5-7; App. 172, l. 17 – 173, l. 2; App. 226, ll. 7-9; App. 269, l. 2 – 274, l. 20. There were also fibers of black fabric stuck to the wall. App. 260, l. 17 – 261, l. 8.

Importantly, SLED found the splattered substance on the wall was not blood. State’s Exhibit # 53 was the cut-away section from the wall, which had been sent to SLED. App. 178, l. 3 – 179, l. 13. Verona Gibson, who was an evidence processing technician at SLED and who was qualified as an expert in forensics processing, testified that she swabbed State’s Exhibit # 53 and tested it for blood, but the test was negative. App. 246, l. 14 – 247, l. 16; App. 252, l. 6 – 253, l. 9. The following exchange took place between the prosecutor and Gibson.

Q. All right. I think what has now been marked State’s No. 53; see if you can identify this.

A. Yes, ma’am. This is a section of the wall that I processed.

² Lawter stated during cross-examination that she did not tell her acquaintance Deborah Martinez Ruiz that Petitioner told Lawter he shot Complainant accidentally. App. 439, l. 13 – 442, l. 17. Martinez Ruiz was called as a rebuttal witness and she claimed that Lawter did tell her Petitioner confessed to shooting Complainant in self-defense. App. 629, l. 25 – 631, l. 13. Martinez Ruiz was admittedly mentally ill and heavily medicated. App. 626, l. 18 – 627, l. 20.

...

Q. Okay. And your presumptive test on this one?

A. Was negative.

Q. Was negative for blood. Okay.

App. 252, l. 5 – 253, l. 9 (emphasis added). To be clear, the splatter on the wall was not blood and it was therefore not Petitioner's blood.³ Prior to trial, it appears both the prosecution and the defense received the SLED report which showed SLED's analysis found no blood on the wall. App. 984 – 986.

Nevertheless, in her opening statement, the prosecutor claimed Petitioner's DNA was found splattered on the wall at the crime scene. "[T]he person that was the shooter, the person that was shot by Mr. Wooten left behind his DNA. A splatter on the kitchen wall and body tissue and hair, is the DNA of the Defendant, Ronnie Swofford." App. 48, ll. 5-9. However, splatter implies blood, which was not found. In fact, only Petitioner's hair was found on the wall and his DNA was found on a bullet jacket on the floor. In his opening statement, defense counsel did not correct this critical misstatement of fact. Instead, defense counsel stated, "The blood and tissue that was found in the home of Curtis Wooten belongs to my client, Ronnie Swofford." App. 49, ll. 18-19.

During the State's case-in-chief, Sergeant David Weiner testified the kitchen wall appeared to have blood on it. App. 235, ll. 11-15.

After the defense had rested its case, which included Petitioner's alibi witnesses and his innocent explanation about being shot a week prior to the incident, the prosecution recalled Investigator Chris Miller in rebuttal to testify about the (nonexistent) blood on the wall. Miller

³ The State has conceded in its return that the substance on the wall was not blood. See State's Amended Return to Petition for Writ of Certiorari Pursuant to *Austin v. State* at 9.

had been a police officer for 18 years and a homicide investigator for 5 years. App. 637, ll. 2-5. The prosecutor attempted to qualify Miller as an expert in gunshot and crime scene reconstruction and she asked Miller whether the substance on the wall would still appear red if it had been deposited several days earlier. App. 637, l. 12 – 638, l. 6. While questioning Miller during voir dire, defense counsel stated that one would not need to be an expert to tell if blood was fresh. App. 639, ll. 18-24. Therefore, the trial court did not rule on Miller's qualification and simply told the prosecutor that since defense counsel had conceded one need not be an expert to determine whether blood was fresh, the detective could testify to that. App. 642, ll. 2-4. The prosecutor elicited the following testimony from Miller.

Q. In State's No. 39, the matter that you see as suspected or possible blood, tissue, hair, **does that appear to be fresh blood**, tissue, hair in your experience?

A. **That would be fresh blood, the red.**

Q. I need you to say that in the microphone?

A. **The blood is red.**

Q. And what does that tell you?

A. **That it is still fresh.**

App. 642, ll. 7-15 (emphasis added). State's Exhibit # 39 was a photograph of the red substance splattered on the wall. App. 164, l. 6 – 165, l. 23; App. 178, l. 3 – 180, l. 1. *See* App. 1132. As seen, Verona Gibson of SLED, who tested the wall for blood, had already testified the substance on the wall was not blood.

On cross-examination, defense counsel only asked Miller one question.

Q. Your testimony is that this is fresh because it's still in a liquid state? I'm holding No. 39 in my hand. That's your testimony?

A. Yes, sir.

App. 645, ll. 10-16.

Defense counsel did not address the fact that there was no blood on the wall with Detective Miller, Verona Gibson, or any witness at all. Defense counsel did not argue to the jury that SLED had found there was no blood on the wall. Defense counsel never acknowledged there was no blood on the wall. Instead, in his closing argument, defense counsel said Miller was wrong about the “blood evidence” because fresh blood would be dripping off the wall. App. 654, l. 19 – 655, l. 6. The freshness of the nonexistent blood on the wall was used by the prosecution, to devastating effect, to discredit Petitioner’s alibi defense and innocent explanation that he was shot the week before by Complainant. The importance of this “evidence” cannot be overstated—the prosecution put up a rebuttal case just to get Investigator Miller’s testimony that the “blood” was “red” and “fresh.”

In her closing argument, the prosecutor argued the “blood” could not have been deposited on the wall days earlier like Petitioner claimed since it was still red and fresh. “That’s body tissue and hair and suspected blood would just be on his kitchen wall for six days? And he wants you to say that this is six days old. I don’t think it takes an expert to testify to you that that stuff is fresh, That is fresh body tissue and blood. When blood dries, it turns brown, doesn’t it? It turns a brownish color.” App. 691, ll. 11-17.

The jury deliberated for three hours but it convicted Petitioner of all charges. App. 725, l. 5 – 736, l. 18.

At his PCR hearing, Petitioner testified that defense counsel failed to address the prosecutor’s incorrect claim that Petitioner’s blood was on the wall when it was not.

Ms. Hodge knew that the actual results of this same blood test, and they knew that my blood didn’t exist. And I felt like that since [counsel] **pretty much conceded me being there with this blood** in the beginning, **never questioning the experts to refute that**

‘hey, this is not his blood.’ And continuing to get in debates with Detective Miller about how fresh the blood is and . . . how red the blood is. The solicitor expounded on the same thing . . . she knew it wasn’t blood . . She expounded about how fresh the blood was, How red it was and . . . both attorneys for the State and the Defense knew what did and did not exist and the jury should not have [been told] those things.

App. 812, l. 21 – 814, l. 4 (emphasis added).

At the PCR hearing, defense counsel testified that he did not remember “exactly what all was involved with” the matter of the purported blood splatter. However, defense counsel recalled the prosecutor used a photograph of purported fresh blood splatter on the wall to “refute Mr. Swofford’s claim that he had been shot in the home roughly a week prior.” App. 842, l. 16 – 843, l. 19.

In its order of dismissal, the PCR court found counsel’s representation was not ineffective regarding the purported blood evidence. “Applicant has failed to meet his burden of proving trial counsel should have challenged the blood and hair evidence. **While the Applicant argued the blood evidence was not actually blood . . . this Court does not find these arguments persuasive.**” App. 864 (emphasis added). “The SLED expert witness testified a swab of tissue from the victim’s kitchen floor and a hair taken from the victim’s wall both matched the Applicant. App. 864. “Trial counsel’s defense theory was that this genetic material was from a prior accidental shooting (of the Applicant) at the victim’s house and that he had an alibi for the time when the victim was shot.” App. 864. “In presenting this defense at trial, this Court finds trial counsel properly questioned the State’s expert witnesses and then argued to the jury in closing argument that the State’s forensic evidence was not dispositive. The Applicant has failed to prove trial counsel was deficient.” App. 864. The court further found Petitioner had failed to prove prejudice. App. 866.

Discussion

Defense counsel's failure to respond to the prosecution's factually incorrect claim that Petitioner's blood was splattered on the wall of Complainant's home was deficient performance. The State's forensic expert from SLED concluded there was no blood on the wall. App. 252, l. 5 – 253, l. 9. Prior to trial both the prosecution and the defense had received the SLED report which concluded there was no blood on the wall. App. 984 – 986. Nevertheless, the prosecutor argued that Petitioner's fresh blood was splattered on the wall, and she elicited from Investigator Miller that there was "fresh" "blood" on the wall. Counsel never corrected these misstatements, and, in fact, he conceded Petitioner's blood was present when there was no blood on the wall. The prosecutor used the nonexistent "blood" evidence to devastating effect in nullifying Petitioner's alibi.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); U.S. Const. am. VI. A two-pronged test for determining effective assistance of counsel was set forth in *Strickland*. The first prong requires an applicant show that counsel's performance was deficient; the second prong requires a showing that the deficient performance prejudiced the applicant to the extent there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The PCR court's finding of effective representation was error. The PCR court found that, "Applicant has failed to meet his burden of proving trial counsel should have challenged the blood and hair evidence. While the Applicant argued the blood evidence was not actually blood . . . this Court does not find these arguments persuasive." App. 864. There was no evidence to

support this finding, and this Court should reverse the denial of PCR. *See Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018) (We defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them.). The red substance on the wall was not blood, according to the State’s own expert. It appears the solicitor knew that, since she at one point called it “suspected blood” in her closing argument. Nevertheless, she elicited testimony from two police officers that there was blood on the wall, when SLED had already concluded it was not blood.⁴

The State argued Petitioner’s fresh blood was splattered on the wall, an argument that, if believed, negated Petitioner’s alibi defense. The prosecutor had already elicited from her own expert witness that the witness tested the wall for blood and the test was negative. App. 252, l. 5 – 253, l. 9. The claim that Petitioner’s fresh blood was on the wall was factually incorrect. At best, there was an inference that Petitioner’s blood was on the bullet jacket (which was on the floor and was not tested for blood) since his DNA was on the bullet jacket. However, any DNA on the bullet jacket was not wetly splattered on the wall effectively negating Petitioner’s defense. Defense counsel’s failure to catch the prosecution’s factually incorrect claims fell below the level of competence required in this case. Counsel should have known there was no blood on the wall since SLED had issued a report stating there was no blood on the wall.

Counsel should have objected to the factually incorrect testimony from the two law enforcement witnesses. Counsel had valid objections he could have made to the prosecutor’s elicitation from Investigator Miller that there was “fresh,” “red,” “blood” on the wall; and from

⁴ Petitioner is not claiming misconduct by the officers, who likely did not remember SLED’s findings as to each item of forensic evidence in a given case, and who were probably relying on the prosecutor not to steer them wrong during their testimony. However, if two experienced police officers who worked on the case did not catch the problem with the “blood” evidence, it is unreasonable to expect that the jury could have done so.

her elicitation from Sergeant Weiner that there appeared to be blood on the wall. Counsel could have objected to the testimony on due process grounds, since “the presentation of known false evidence is incompatible with rudimentary demands of justice.” *Giglio v. United States*, 405 U.S. 150, 153 (1972) (cleaned up); U.S. Const. amend. V; U.S. Const. amend. XIV. “The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction [is] implicit in any concept of ordered liberty.” *Napue v. Illinois*, 360 U.S. 264, 269 (1959). “The failure to correct false evidence is as reprehensible as its presentation.” *Riddle v. Ozmint*, 369 S.C. 39, 47–48, 631 S.E.2d 70, 75 (2006) (citing *Washington v. State*, 324 S.C. 232, 235, 478 S.E.2d 833, 835 (1996)).

Counsel could have objected under Rule 403, SCRE, since the testimony was likely to mislead the jury. *See* Rule 403, SCRE (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”). Counsel could have objected to facts not in evidence. *E.g.*, *State v. Tyner*, 273 S.C. 646, 654–55, 258 S.E.2d 559, 564 (1979) (trial court properly sustained objection to question that assumed facts not in evidence). Counsel could have moved to strike the testimony and asked for a curative instruction. Counsel could have moved for a mistrial. *E.g.*, *State v. Crim*, 327 S.C. 254, 257, 489 S.E.2d 478, 480 (1997) (instruction to disregard objectionable evidence usually is deemed to have cured the error in its admission unless on the facts of the particular case it is probable that notwithstanding such instruction the accused was prejudiced); *State v. Makins*, 433 S.C. 494, 500, 860 S.E.2d 666, 670 (2021) (trial court has discretion to grant a mistrial when prejudice can be removed in no other way). Counsel could have cross-examined SLED’s forensic processing expert and State’s witness Verona

Gibson to clarify there was no blood on the wall. However, instead of clarifying that Petitioner's blood was not on the wall, counsel conceded Petitioner's blood was at the scene during argument and counsel quibbled with Investigator Miller over the freshness of the "blood."

In addition to objecting to the testimony, counsel should have objected to the prosecutor's factually incorrect argument about the "blood." Perhaps the solicitor did not listen to her expert witness from SLED when the expert said the substance was not blood. App. 252, l. 6 – 253, l. 9. Perhaps she did not read the SLED report received by her office prior to trial which stated the evidence was not blood. App. 984 – 986. Regardless, the prosecutor's argument that: "I don't think it takes an expert to testify to you that that stuff is fresh, that is fresh body tissue and blood. When blood dries it turns brown, doesn't it? It turns a brownish color," was objectionable. App. 691, ll. 11-17. Counsel should have objected on the grounds that the argument was not confined to the evidence and reasonable inferences from the evidence. *See, e.g., State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) (solicitor's closing argument may not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it); *Tappeiner v. State*, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016) (solicitor's statements which misrepresented the evidence adduced at trial were clearly improper and objectionable); *Fortune v. State*, 428 S.C. 545, 561, 837 S.E.2d 37, 46 (2019) (solicitor's misconduct in closing argument amounted to due process violation requiring new trial).

Counsel's failure to challenge the incorrect assertions that there was blood on the wall and that it was fresh was not strategic. Counsel presented a defense that Petitioner had an alibi and that any of his DNA left at the scene was left a week earlier when Petitioner was shot by Complainant. Petitioner's fresh blood being on the wall was inconsistent with this defense. Counsel could have effectively represented Petitioner if he had pointed out to the jury that there

was no blood on the wall and therefore it could not be fresh and wet. Because no objections were made to this presentation of factually incorrect evidence and improper argument, the testimony was not stricken. No curative instructions were given. The jury was not instructed to disregard the improper argument. Additionally, the judge did not instruct the jury that the attorneys' arguments were not evidence. Nevertheless, the jury deliberated for three hours.

Counsel's deficient performance was incredibly prejudicial to Petitioner. "In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 695-96). "In addition, the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury." *Id.* The prosecutor elicited incorrect testimony from Detective Miller and Sergeant Weiner that there was blood on the wall. Detective Miller was a highly experienced police officer and homicide investigator, and he said the "blood" looked "fresh," which surely would have been compelling to the jury.

In contrast, the testimony that there was *no* blood on the wall came out during complicated testimony about multiple exhibits where the prosecution and its witnesses referred to single exhibits using multiple identification numbers. The testimony that the presumptive test was negative for State's Exhibit #53 (i.e., there was no blood on the wall) was obscure enough that trial counsel and the two testifying police officers did not catch it. "DNA evidence is well known as a powerful and accurate evidentiary tool for the State to solve crimes and obtain convictions. Nevertheless, DNA evidence has also come to be known for its potential to confuse and mislead jurors." *State v. Phillips*, 430 S.C. 319, 329, 844 S.E.2d 651, 656 (2020). In *Phillips*, the South Carolina Supreme Court concluded that misstatements and wrong statements by the

solicitor and SLED analyst about complicated DNA concepts required a new trial, especially where solicitor's incorrect statements in closing argument all but guaranteed the jury was confused and misled. *Phillips*, 430 S.C. at 342, 844 S.E.2d at 663. In this case, like in *Phillips*, the manner in which the correct testimony about the actual evidence came out was confusing and the prosecutor's misstatements during closing argument all but assured the jury was confused and misled.

The failure to object to the solicitor's improper argument and to the improper testimony by Sergeant Weiner and Detective Miller prejudiced Petitioner. The impact of counsel's errors was to allow the jury to believe that Petitioner's defense was invalid because if he was really at home when Complainant was shot as he claimed, his "fresh" "blood" would not have been on Complainant's wall when law enforcement arrived. The testimony and argument impugned Petitioner's alibi, which was testified to by two witnesses who were home with him, and corroborated by two others who saw him heading home and arriving home. Petitioner provided an innocent explanation for the actual forensic evidence found. The solicitor put up a rebuttal case just to emphasize this "blood" "evidence." There is a reasonable likelihood the result of the trial would have been different if Petitioner had the effective assistance of counsel. Petitioner has proven error and prejudice. *Strickland*, 466 U.S. at 686; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

CONCLUSION

Based on the foregoing argument, this Court should reverse the denial of PCR and grant Petitioner a new trial.


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ATTORNEY FOR PETITIONER

This 22nd day of July, 2024.

RECEIVED

Jul 22 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Petitioner in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ronnie Cleveland Swofford, #218281, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 22nd day of July, 2024.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

Feb 13 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County
The Honorable G. D. Morgan, Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellant Case No. 2021-001436

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PETITIONER'S STATEMENT OF THE ISSUE

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

RESPONDENT'S COUNTER STATEMENT OF THE ISSUE

Did the PCR court correctly deny the application when Petitioner has failed to prove that there is a reasonable likelihood that the outcome of his trial would have been different had trial counsel ensured that it was clear that the State did not find any evidence that Petitioner's blood was on the victim's kitchen wall?

STATEMENT OF THE CASE

Petitioner 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, Petitioner was indicted for assault with intent to kill (2011 - GS-23-7263).

On May 14-17, 2012, Petitioner's case was called to trial with the Honorable Edward W. Miller presiding. Andrew Johnson, Esq., and Gerald Wilson, Esq., represented Petitioner on the charges and Assistant Solicitor Kris Hodge prosecuted the case. At the conclusion of trial, the jury found Petitioner guilty as indicted and Judge Miller sentenced Petitioner 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 Petitioner 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 the Petitioner's behalf at the South Carolina Court of Appeals. The appeal was dismissed at the Applicant's request after his motion to relieve LaNelle DuRant, Esq., of the South Carolina Office of Appellate Defense was denied. Petitioner then filed a *pro se* motion for a new trial which was subsequently dismissed as was the appeal of its dismissal. The remittitur was issued July 9, 2014.

Petitioner 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 Petitioner and Assistant Attorney

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

Petitioner filed a second PCR application (2018-CP-23-5662) on November 6, 2018. Petitioner 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. Petitioner was present via video and telephonic audio and was represented by Susannah C. Ross, Esq. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office represented Respondent. After considering the testimony and the record, the PCR court granted the *Austin* claim finding that Petitioner did not knowingly and voluntarily waive the appeal of the denial of his first PCR application.

The South Carolina Supreme Court received the Petitioner'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. Petitioner filed the Petition for Writ of Certiorari and Appendix on July 11, 2022, raising the following issue:

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

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

Petitioner submitted the Brief of Petitioner on July 22, 2024, and Respondent now submits the Brief of Respondent and will respectfully show this Court:

RESPONDENT'S STATEMENT OF FACTS

Curtis Wooten ("the victim") met Petitioner 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 Petitioner 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, Petitioner set up meetings with the victim by text message and then failed to keep them. (App. 68-69).

Sometime after 2:00 a.m. of the morning following the night at which Petitioner was supposed to repay the victim, the victim returned to his home after having gone to the grocery store. (App. 69-70, 86). Petitioner 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, 125-27). 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 Petitioner. (App. 71). He told a law enforcement officer at the hospital Petitioner shot him and about the pistol Petitioner 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 Petitioner as the shooter. (App. 112-13). He testified Petitioner was the intruder and the pistol Petitioner used had been the same one Petitioner had shown to him the day before the shooting. (App. 85-87). He recognized Petitioner's voice when Petitioner called out his name before shooting him. (App. 131). He assumed that Petitioner 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. 122-24). 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. 129-30).

Sergeant David Hayes of the Greenville County Sheriff's Office responded to the victim's 911 call, arriving at the hospital at approximately 2:45 a.m. on the morning of the shooting. (App. 142-43). Sgt. Hayes was able to speak briefly with the victim at the hospital, and the victim told him that an unknown assailant in dark clothing entered his home and started shooting

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

at him, and then identified Petitioner as the shooter, explaining that Petitioner owed him money. (App. 143-44). The victim told Sgt. Hayes that he was not “totally certain” Petitioner was the intruder, but said Petitioner 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. 136-39).

Officer John Derby of Greenville County Forensics went to the victim’s home to collect evidence. (App. 151-53). 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. 162-64). 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. 173-74). 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. 226-27). Officer Derby found what appeared to be a wad of fabric next to the projectile hole and noted the area around the hole had “stains” that he did not see appearing anywhere else on the wall. (App. 164-65). He cut away that section of the wall so he could collect it for 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. 230-31).

investigation due to the fact that section contained “suspected blood” and fabric that was visible. (App. 165-66, 177-78). 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 a 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 4:00 a.m. 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, 241-42). He called the number for “Ronnie,” but

received no response until Petitioner returned his call two days later. Petitioner 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. 237-39, 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 Petitioner. (App. 265-70). 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. 270-71). She also determined the DNA profile of the hair collected from the wall cutout matched Petitioner'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 Petitioner using the phone number Sgt. Weiner previously used, but Petitioner never called him back. (App. 306-07). 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 Petitioner by going to his residence. (App. 314-16). He secured arrest warrants for Petitioner after SLED's preliminary analysis showed Petitioner'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 Petitioner on various metal fabrication jobs for about two to three years prior to the shooting. Smalley testified he was "pretty sure" he and Petitioner went to high school together and had known Petitioner about 20 years prior to working with him. (App. 363-65). He agreed that he had been friends with Petitioner for some years. (App. 370-71). He testified when Petitioner was working with him on July 22, he noticed Petitioner's arm was injured and covered with a gauze bandage, which looked as if it had been put on by Petitioner himself. (App. 369-70). He said the wound was on Petitioner's left arm and was consistent with two pierce marks that looked as if something had passed through the arm. (App. 370). Petitioner told him that he had gotten the injury when a friend's gun had discharged. (App. 372-73). He testified he did not know what Petitioner was doing in the early morning hours of July 22. (App. 373).

Petitioner's mother Phyllis Swofford testified Petitioner's birthday is on July 25. (App. 374). She noticed a bandage on Petitioner's left arm on July 23, and described the bandage as a "band-aid." (App. 377-79). 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 Petitioner’s pressure washing wand. (App. 378-79). On cross-examination, she testified she knew Petitioner had had “the place” on his arm on July 23, and then said after a follow-up question from the solicitor that Petitioner 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. 383-86).

The defense called Charlie Duffie, who testified he had known Petitioner since they worked together in the late 1980s and that he and Petitioner had become “fairly close” friends over the past seven or eight years.³ (App. 390-91). Duffie later agreed he and Petitioner were “real close.” (App. 396). Duffie testified he noticed a bandage on Petitioner’s left arm on July 23 when they were celebrating Petitioner’s birthday. (App. 391-93). He said the bandage consisted of two band-aids, one on the front of Petitioner’s forearm and another on the rear. (App. 393). He testified Petitioner 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 Petitioner was arrested that the injury to Petitioner’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 Petitioner and

³ The solicitor’s investigator reported during trial that he had seen Petitioner’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. 400-04).

Petitioner's lawyer would come to him if they had questions about it. (App. 397-99). He did not know Petitioner's location in the early morning hours of July 27, 2009. (App. 399).

Shannon Lee Lawter testified she had been in a relationship with Petitioner for six years and she and Petitioner 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 Petitioner's birthday is July 25, and she was with Petitioner at a birthday meal for him at a Japanese restaurant on July 25, 2009. (App. 406-08). She said she first noticed an injury to Petitioner's left arm around July 22, and testified she saw "a place" on the arm, describing it as a burn or a graze wound. (App. 408-10). Lawter testified Petitioner arrived home from work at about 1:30 a.m. on July 27, 2009, and that it was not unusual for Petitioner to get home from work early in the morning. (App. 413-14). She said Petitioner did not leave once he arrived at home, until he left to go to Charlotte that same morning at about 6:00 a.m. (App. 416-17). She testified that she told the law enforcement officers who came to the house investigating the shooting that Petitioner had not been shot because she thought that the injury looked like a burn. (App. 418-19). She testified she told Petitioner the officers had come to the home to ask to speak to him, and that Petitioner told her he did not know why they were looking for him. (App. 426-27). Petitioner 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 Petitioner told her initially he had injured his arm on a lawn mower. (App. 428-29). 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 Petitioner later told her the victim had accidentally shot him on July 21 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. 445-47). She explained

her statement to officers that Petitioner 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 Petitioner 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 Petitioner told her details about the shooting and denied that she told Martinez that she would lie for Petitioner at his trial. (App. 442). She denied sending text messages to Stephen Parham saying that he needed to be at Petitioner’s trial. (App. 443). She denied she and Petitioner 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 Petitioner. (App. 443, 447-48).

Lawter’s son, Jordan, (Petitioner’s stepson), testified Petitioner was like his father. (App. 449). He testified Petitioner was in Petitioner’s bedroom at 2:20 a.m. on July 27, 2009, and that he went to Charlotte with Petitioner later that morning at 6:00 a.m. (App. 452-53). He said he saw a bandage on Petitioner’s arm when they went to Charlotte, but he did not know the details of Petitioner’s injury. (App. 459). Jordan still lived with Petitioner. (App. 455). He said he did not tell the officers when they showed up to arrest Petitioner that Petitioner 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. 461-62). He agreed he wanted Petitioner 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 Petitioner for twelve or thirteen years - maybe more. Petitioner testified he met Pullen when they were both imprisoned together. (App. 463, 603-04). Pullen said he saw Petitioner’s vehicle drive by him at about 1:15 a.m. on July 27, 2009, and he called Petitioner and had a phone conversation with him. (App. 465-68). He put

that phone call between 1:30 and 1:35 a.m. (App. 469). He said that he did not share his information with officers even though he was aware that Petitioner had been arrested. (App. 471-72). He did not know Petitioner's location at the time of the shooting. (App. 472).

Stephen Parham, who has a learning disability and is Martinez's son and Petitioner's former neighbor, testified that he is friends with Petitioner. (App. 472-73, 482, 628). He claimed to have talked to Petitioner right outside Petitioner's home at 1:36 a.m. on July 27, 2009, and that Petitioner went inside his house afterwards and did not leave again. (App. 478-79). 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. 481-82). He admitted that he told the solicitor's investigators the week before trial that he was not "100 percent certain" that Petitioner had gone into his house that night. (App. 482).

When he met with trial counsel, Petitioner had driven him to the appointment and bought him breakfast along the way, and told him that, when the case was over, he and Petitioner would "hang out together, catch up on lost time," and that Petitioner would get a gym membership and show him how to work out. (App. 483). He agreed Petitioner had shown his entire case file to him and said that he wanted him to testify that he saw Petitioner 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. 486-87). He agreed that he had started to feel

as if Petitioner had been trying to manipulate him in order to get him to say certain things. (App. 487).

Petitioner's brother James B. Swofford testified that he was at the Japanese restaurant with Petitioner and others on Petitioner's birthday. (App. 497-98). 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 Petitioner's arm. (App. 499).

Petitioner testified in his own defense. After admitting to a redacted version of his own criminal record, Petitioner testified that he became friends with the victim in prison and then reconnected with him on the outside. (App. 500-18). He testified that the victim had exaggerated the number of times on which they met, though. (App. 520-22). 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, 549-50, 594). He said that he stopped by the victim's home on July 21, 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. 532-42). 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).

Petitioner 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. 544-45). Petitioner testified that he went to his birthday dinner on July 25, and that the photographs taken there show the injury to his arm and that others saw his injury. (App. 552-53). 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 12:05 a.m., dropped an employee off at the employee's home at 12:35 a.m., received a call from Pullen, arrived at home at 1:35 a.m., and stayed there until 5:55 a.m. (App. 557-65). 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. 566-67). He denied that he shot the victim. (App. 569).

Petitioner testified that, when he saw his AIDS counselor on July 21, his counselor did not raise concerns about the bandage on his arm and told him later that he had not noticed the bandage. App. 576-78. 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. 582-83. 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 Petitioner 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. 590-91. 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. 615-18).

Martinez testified during the State's case-in-reply that she was Petitioner's and Lawter's neighbor. (App. 625). She testified that Lawter had visited her in February of 2019 after having had an argument with Petitioner and said that Petitioner told her that he had shot the victim in self-defense, and that Lawter said that she did not want to testify against Petitioner because they had a son together and that she would not say in court what Petitioner had told her. (App. 629-33).

Inv. Miller also took the stand again. He testified that Petitioner's witnesses had not told him the things about which they testified. (App. 635-36). 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. 639-42). 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 Petitioner'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 Petitioner's blood on the wall before the victim gave his written statement. (App. 654-55, 665). The solicitor argued that Petitioner'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 Petitioner at the crime scene. (App. 691, 703). The jury found Petitioner guilty as indicted on all counts, and the trial court issued the mandatory life sentences. (App. 725-26, 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, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief 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 only reverse the decision of the post-conviction relief 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

- I. The PCR court was correct to deny the application because Petitioner has failed to prove there is a reasonable likelihood the outcome of his trial would have been different had trial counsel ensured it was clear that the State did not find any evidence that Petitioner's blood was on the victim's kitchen wall.**

Petitioner asserts error in the PCR court's analysis of *Strickland* deficiency and prejudice as to his PCR allegation that trial counsel failed to challenge the prosecutor's claims that Petitioner's fresh blood was splattered on the wall. Petitioner claimed the solicitor improperly discussed the observed blood splatter after SLED determined there was no blood on the wall which discredited Petitioner's alibi that he was accidentally shot by the victim days before the shooting occurred. Despite Petitioner's contention, the PCR court made reasonable findings based on the evidence and the record before it, and properly applied *Strickland* to the circumstances of Petitioner's case.

In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). 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.

"Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel

were unreasonable, therefore, 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 PCR court found trial counsel was not deficient for not vigorously challenging witness testimony and solicitor remarks regarding fresh blood splatter on the kitchen wall in the victim’s home. Trial counsel’s representation is measured by reasonableness of his actions at the time of trial, not in hindsight. *See generally, Strickland*.

An indicative overview of the defense strategy is illuminated in trial counsel’s closing argument in which he specifically references the lack of forensic evidence as to the alleged splattered blood in the victim’s kitchen. Trial counsel notes the State did ample tests on different genetic material, yet did not do the same with the blood evidence. He reiterates there was no forensic testimony as to how long the blood had been in the victim’s kitchen nor were there any reports observing the blood to appear fresh. Trial counsel criticized Inv. Miller’s testimony that he could discern whether blood is fresh by observing a photograph, noting that the blood in the victim’s kitchen was not in a liquid state dripping down the wall.

Any mention of the blood in the kitchen was based off observation and appearance. Sgt. Weiner testified he remembered there was a spot on the wall between the kitchen and living room that “looked to me” like blood. (App. 235). Apparently, the substance on the wall looked like blood to the naked eye and Sgt. Weiner only described the scene as he had observed at that time. The fact that even trial counsel and Petitioner seem to have conceded the substance looked like blood mitigates any reason to think that the witnesses’ descriptions of the substance as blood were insincere; in fact, trial counsel offered a reasonable explanation that, at some points in the trial, the technical terms for the biological substances found at the crime scene may have been used interchangeably. It is unclear from the record if the photograph that Inv. Miller was looking

at when he testified about the freshness of the blood depicted the substance that the SLED agents had tested or if it depicted some other substance on the wall that was not specifically identified in a way that would be illuminating to one studying the trial transcript. Further, the jury heard SLED Agent Gibson clarify that the swabbed portion of the wall tested negative for the presence of blood. (App. 252-53).

“The reasonableness of counsel’s performance is to be evaluated from counsel’s perspective at the time of the alleged error and in light of all the circumstances.” *Strickland*, at 689, 104 S.Ct. 2052. Trial counsel criticized Inv. Miller’s identification of “fresh” blood in his closing argument, asserting that Inv. Miller cannot identify the status of the blood via observation of a photograph. The issue of the “freshness” of the blood in the kitchen did not go unaddressed by trial counsel. Trial counsel objected to qualifying Inv. Miller as an expert and to his testimony concerning a determination of “freshness.” (App. 632-42). The trial court found Inv. Miller did not need to be an expert to testify as to whether the blood was fresh.

While Petitioner asserts trial counsel failed to challenge the blood matter, trial counsel clearly raised issue with the description of the blood as being fresh. He again addressed Inv. Miller’s testimony in closing and focused on inconsistent results of the forensic testing offered by the State. The PCR court reasonably and with supporting evidence, found trial counsel did not act deficiently and that Petitioner failed to meet his burden of proof under *Strickland*.

The second prong of *Strickland* - a prejudice analysis - supports that absent testimony regarding “fresh” blood on the wall in the kitchen of the victim’s home, based on the additional evidence and testimony provided, Petitioner could not overcome the *Strickland* standard of prejudice. *See Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625 (because of counsel’s alleged error,

“there is a reasonable probability that, but for [the lawyer’s] unprofessional errors, the result of the proceeding would have been different.”).

“[T]he question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently.” *Harrington v. Richter*, 562 U.S. 86, 111, 131 S. Ct. 770, 791, 178 L. Ed. 2d 624 (2011); *See Wong v. Belmontes*, 558 U.S. 15, 27, 130 S.Ct. 383, 390, 175 L.Ed.2d 328 (2009) (per curiam); *Strickland*, 466 U.S., at 693, 104 S.Ct. 2052. “Instead, *Strickland* asks whether it is ‘reasonably likely’ the result would have been different.” *Harrington*, 562 U.S., at 111, 131 S. Ct. 792; *Strickland*, at 696, 104 S.Ct. 2052. “This does not require a showing that counsel's actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S., at 112, 131 S. Ct. 792; *Strickland*, at 693, 697, 104 S.Ct. 2052. “The likelihood of a different result must be substantial, not just conceivable.” *Harrington*, 562 U.S., at 111, 131 S. Ct. 792; *Strickland*., at 693, 104 S.Ct. 2052.

As to Petitioner’s defense strategy, his greatest challenge was that he had to overcome the victim’s identification of him as the intruder while also explaining away the gunshot wound in his arm. Petitioner conceded he was in the victim’s house previously, and the victim had accidentally shot him, which would explain the presence of his blood in the victim’s house.

However, it is not hard to objectively scrutinize Petitioner’s attempted explanation for not going to the hospital or reporting the victim to law enforcement. Petitioner contradicts the extent of his relationship with the victim, suggesting that he did not go to law enforcement out of loyalty to his friend, but downplayed their friendship and the frequency with which they saw each other. Further, Petitioner testified he was diagnosed with HIV in 1989, which he contracted

from prison tattoos while he was incarcerated. Petitioner testified that he started frequently getting sick and he went to the doctor where his blood count was regularly monitored. (App. 513). He eventually started taking medication due to his condition. (App. 513). It is common knowledge how HIV can be contracted, and Petitioner's testimony that he never went to get medical treatment from an injury that has been referred to as a "pierce" or a "burn" and significant enough to need a bandage raises inquiry as to why he did not get treatment. Instead, he testified he rinsed his arm with a garden hose and doctored it himself with veterinarian supplies from home.

Petitioner also faces the challenge of overcoming the victim's identification of him on the night of the shooting in which Petitioner testified he recognized Petitioner's voice and eyes through the cuts in his ski mask. The victim testified that he had spent several days a week with Petitioner since they had been released, and that he considered them to be good friends. Such good friends, in fact, that the victim lent Petitioner money to pay his bills, yet Petitioner evaded re-payment – a suggested motive for the shooting.

Additionally, Petitioner presented witnesses that objectively warrant credibility concerns. Petitioner's mother gave a description of the dressings on Petitioner's alleged wounds that differed from his own. She further testified that she did not inform law enforcement about the Petitioner's injuries because she did not have a car and could not drive to Greenville – yet confirmed she did have phone. And as of note, she had impeachable criminal convictions on her record. Of course there is the inherent interest of protecting her son, and her testimony suggests that she would want to help Petitioner. Petitioner also presented the testimony of a close friend, who gave a description of Petitioner's wound dressing that differed from Petitioner's own, who

gave a non-credible explanation for his pre-trial silence about the timing of Petitioner's alleged arm wound, and who had impeachable criminal convictions on his record.

Petitioner presented his ex-girlfriend and mother of his child, who is an important witness considering he claimed to be at home with her at the time of the shooting. She gave an evasive explanation for her pre-trial silence about the alleged wound on Petitioner's arm, whose testimony was cast in doubt by (among other things) another witness's rebuttal testimony. The rebuttal testimony impacted the ex-girlfriend's credibility as it revealed she had said that she would not reveal the truth of the matter at trial, made threatening statements to another of Petitioner's witnesses in an apparent attempt to secure his favorable testimony for Petitioner, and had an impeachable criminal conviction on her record. Another witness who raised concern as to Petitioner and his presented witness credibility, was a special needs young man who unexpectedly conceded that his initial testimony had been a recitation of what Petitioner wanted him to say, that Petitioner's girlfriend had communicated with him in advance of trial about his testimony in a way that made him feel threatened, that he felt that Petitioner was trying to manipulate him, and that he felt scared to testify against Petitioner.

Considering the testimony and evidence before the jury, the allegation Petitioner again raises does not warrant relief. The alleged deficiency simply was not shown, or if shown, Petitioner failed to show a reasonable probability of a different outcome. Petitioner's testimony and witness testimony lacked credibility and was blatantly bias, the forensic evidence placed Petitioner in the victim's home, and the victim himself identified Petitioner as being the intruder. The PCR Court reasonably concluded that Petitioner was not prejudiced as a result of trial counsel's alleged deficiency.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully requests this Court to affirm the denial of relief.

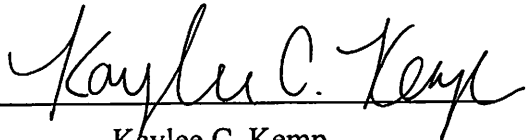
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

RECEIVED

Feb 13 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County
The Honorable G.D. Morgan Jr., Post-Conviction Relief Judge
Appellate Case No: 2021-001436

RONNIE C. SWOFFORD,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

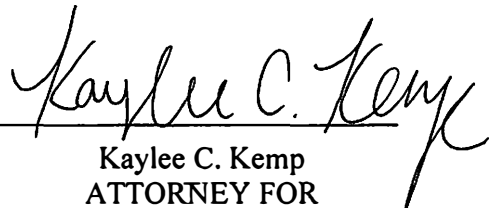
Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that as per the March 20, 2020 Order of the Chief Justice, the *Brief of Respondent* has been forwarded to Appellant's counsel, Joanna K. Delany, Esquire, via email today to delany@sccid.sc.gov and to her assistant Sara McInnis, at smcinnis@sccid.sc.gov.

This 20th day of November 2024.

By: _____



Kaylee C. Kemp
ATTORNEY FOR
RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ronnie C. Swofford, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-001436

Appeal From Greenville County
G. D. Morgan, Jr., Circuit Court Judge
Perry H. Gravely, Post-Conviction Relief Judge

Unpublished Opinion No. 2025-UP-294
Heard June 4, 2025 – Filed August 13, 2025

REVERSED AND REMANDED

Appellate Defender Joanna Katherine Delany, of
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, Assistant
Attorney General Ryan Thomas Kowalski, and Assistant
Attorney General Kaylee Christene Kemp, all of
Columbia, for Respondent.

PER CURIAM: Ronnie C. Swofford (Petitioner) appeals the post-conviction relief (PCR) court's order denying relief, arguing counsel was deficient for failing to challenge the State's claim that his blood was spattered on a wall at the crime scene. The State argues trial counsel was not deficient, and, even if he was, Petitioner failed to prove that there was a reasonable likelihood that the outcome of his trial would have been different if trial counsel had "ensured it was clear" that there was no evidence of Petitioner's blood on the wall. We reverse and remand to the Court of General Sessions for a new trial.

In 2009, a Greenville County grand jury indicted Petitioner for first-degree burglary, assault and battery with intent to kill (ABWIK), possession of a weapon during a violent crime, and possession of a pistol by a person convicted of a violent crime. A second grand jury indicted him in 2011 for assault with intent to kill (AWIK) in relation to the same incident as the previous charges. In 2012, Petitioner proceeded to trial on all charges.

At trial, Curtis Wooten (Victim) testified he and Petitioner were friends and he had loaned Petitioner money. He recalled that on the night of the incident, he and Petitioner had planned to meet so that Petitioner could pay him back but Petitioner later told him he was unable to meet. Victim testified that that same night, he was standing in his kitchen when a masked gunman entered his house and called out his name. He immediately recognized Petitioner as the gunman because the mask did not cover his entire face, the gunman was using a gun Petitioner had shown Victim several days before, and he recognized Petitioner's voice. The intruder shot Victim and fired several shots at Victim's girlfriend before Victim returned fire, striking the intruder. Victim and his girlfriend called 911 and went to the hospital immediately following the incident.

Officer John Derby, of Greenville County Forensics, testified he collected evidence from the crime scene in Victim's home and located a projectile hole in the kitchen wall as well as a projectile jacket and three cartridge cases on the floor. He described how the projectile jacket had "blood and possible tissue" on it. Derby further recalled observing "stains" on the wall around the projectile hole and explained the section was cut away and collected as evidence. Verona Gibson, an evidence processing technician in the DNA Department of the South Carolina Law Enforcement Division (SLED), testified she received the section of wall removed from Victim's house. She stated the wall stains were negative for the presence of blood but she did recover a hair from the wall. Adrian Hefney, a SLED DNA analyst, testified the "suspected blood tissue" from the projectile jacket found on the floor and the hair removed from the wall matched Petitioner's DNA.

Investigator Christopher Miller, of the Greenville County Sheriff's Office, testified he responded to the scene of the shooting, and he recalled "blood spattered on the wall." The State asked Miller whether the "suspected or possible blood, tissue, [or] hair" on the wall appeared to be "fresh," and he responded that the "blood" on the wall was red, which indicated it was "fresh blood." Trial counsel did not contemporaneously object or challenge Miller's description of the stains on cross-examination but asked if Miller felt the "blood" was fresh because it was in a liquid state.

Sergeant David Hayes, of the Greenville County Sheriff's Office, testified that at the hospital, Victim stated that an unknown assailant came into his home and began shooting at him. He then asked Victim if he knew anyone who would have done this; Victim immediately gave Petitioner's name and explained Petitioner owed him money. However, Hayes stated Victim also told him he was not "totally certain" the attacker was Petitioner.

Petitioner testified that he stopped by Victim's home several days before the shooting and Victim accidentally shot him but he did not report the incident out of loyalty to Victim. Petitioner presented the testimony of eight witnesses who claimed to have seen the wound on his arm before the date of this incident; however, the witnesses offered differing testimony regarding how Petitioner received the wound and the type of bandage he used for the wound. Additionally, four of the witnesses provided testimony claiming to have either seen or heard from Petitioner at the time of the incident.¹

Despite Gibson's testimony that the substance on the wall was not blood, at various points during the trial, the State and trial counsel referenced the presence of Petitioner's "blood" at the crime scene. In its opening statement, the State told the jury that the intruder left DNA at the crime scene, including "[a] splatter on the kitchen wall and body tissue and hair." In his opening statement, trial counsel conceded that "the blood and tissue" at the crime scene belonged to Petitioner, but he contended there was an "innocent explanation." During closing arguments, trial counsel stated the "genetic material" belonged to Petitioner but argued no evidence showed the "blood" on the wall was "fresh," asserting that if it had been fresh, it would have been "dripping" in the photograph. He also noted SLED did not

¹ The State impeached some of Petitioner's witnesses with prior convictions and others were unable to explain why they had not told police before trial that they had seen Petitioner's injury prior to the incident.

perform tests to determine how long the "blood" had been on the wall and disagreed with Miller's testimony that it was "fresh." The State told the jury in closing that there was "fresh body tissue and blood" on the wall and "tissue, hair, and blood DNA" linking Petitioner to the scene, arguing that the presence of fresh blood negated Petitioner's explanation that he had been shot a week prior.

The jury found Petitioner guilty as indicted. The trial court sentenced him to life imprisonment without the possibility of parole (LWOP) for first-degree burglary, LWOP for ABWIK, ten years' imprisonment for AWIK, and five years' imprisonment for possession of a pistol by a person convicted of a violent crime.

Petitioner filed his first application for PCR.² At the PCR hearing, Petitioner argued trial counsel should have objected to the State's characterization of the wall staining as blood. Petitioner initially stated his blood was not found in the home but acknowledged on cross-examination that his blood tissue was found on the projectile jacket in the home. Trial counsel recalled that at trial, the State had pointed to the freshness of the "blood" on the wall to illustrate that Petitioner had not been shot the week before, as he claimed. Counsel stated he offered the testimony of several witnesses indicating they had seen Petitioner's wound before the incident, but counsel was unable to "remember what all was involved" with whether the staining on the wall was confirmed to be blood. Counsel acknowledged it was possible the term "blood" may have become "intermingled" with the term "genetic material" or "blood[-]like tissue" and he wished he had "someone to advise [him] about all the meanings and things of this somewhat complicated scientific evidence." He explained his primary concern at trial was overcoming the eyewitness testimony identifying Petitioner as the intruder and the genetic material placing Petitioner at the scene.

The PCR court found trial counsel was not ineffective for failing to object to the blood evidence, stating it did not find Petitioner's argument that "the blood evidence was not actually blood" to be persuasive. It further found trial counsel was not deficient because he properly questioned the State's witnesses and argued the forensic evidence was not dispositive. The court also found Petitioner failed to prove prejudice. The PCR court therefore denied Petitioner's application. PCR

² Petitioner also filed a direct appeal, but this court dismissed the appeal at Petitioner's request. Petitioner then filed a pro se motion for a new trial based on after-discovered evidence, which the circuit court denied. It also denied his Rule 59(e), SCRCP, motion for reconsideration. Petitioner appealed the denial of his motion for a new trial, which this court dismissed at Petitioner's request.

counsel filed a Rule 59(e) motion for reconsideration, which the PCR court denied.

In 2016, PCR counsel filed an untimely notice of appeal, which this court dismissed. In 2018, Petitioner filed a second PCR application seeking belated appellate review of the denial of his first PCR action pursuant to *Austin v. State*.³ After a hearing, the second PCR court granted Petitioner a belated review of his first PCR.⁴ Counsel for Petitioner filed a petition for a writ of certiorari asserting the second PCR court properly granted Petitioner a belated appeal of his first PCR action. Counsel also filed a petition for a writ of certiorari, pursuant to *Austin*, from the denial of Petitioner's first PCR action. Our court granted certiorari, and both parties filed briefs.

"In [PCR] proceedings, the burden of proof is on the applicant to prove the allegations in his application." *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008). To establish a claim of ineffective assistance of counsel, a PCR applicant must show that counsel was deficient and that counsel's deficiency prejudiced the defendant's case. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate deficiency, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. Additionally, an applicant "must prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (emphasis omitted). However, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland*, 466 U.S. at 697.

We find the evidence does not support the PCR court's finding that trial counsel was not ineffective for failing to object to the "blood" evidence. *See Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018) (explaining a reviewing court "defer[s] to a PCR court's findings of fact and will uphold them if there is any evidence in the record to support them"). First, we find trial counsel was deficient by failing to object to misstatements of evidence that invalidated Petitioner's defense. *See Strickland*, 466 U.S. at 688 ("The proper measure of attorney performance [is] simply reasonableness under prevailing professional norms.").

³ 305 S.C. 453, 454-55, 409 S.E.2d 395, 396 (1991) (providing for the belated appellate review of the denial of PCR when the applicant did not knowingly and intelligently waive his right to appeal the denial of PCR).

⁴ The State conceded Petitioner was entitled to a belated appellate review.

The State incorrectly argued Petitioner's fresh blood was spattered on the wall, despite the testimony of its own witnesses that the stains on the wall were *not* blood. *See Tappeiner v. State*, 416 S.C. 239, 251-52, 785 S.E.2d 471, 477-78 (2016) (finding trial counsel was ineffective for failing to object to the solicitor's statements misrepresenting the evidence). Trial counsel also continued to reference the "blood" on the wall after Gibson's testimony. The PCR court stated it did not find Petitioner's argument about the lack of blood to be "persuasive," conflating Petitioner's baseless argument about the lack of blood on the projectile jacket with his correct statement that the stains on the wall were not blood. Although the PCR court found trial counsel was not deficient because he argued the DNA evidence was not "dispositive," we find counsel's statements during closing arguments did not remedy the error because the presence of "fresh blood" directly contradicted Petitioner's defense that he had been shot a few days prior to the incident. The State relied extensively on Miller's description of the "blood" as "fresh" to invalidate Petitioner's defense, and rather than challenge that assertion on cross-examination, trial counsel instead conceded the substance was blood. Trial counsel never corrected the State's mischaracterization and later compounded the error by contending in closing arguments that if the "blood" had been fresh, it would have been "dripping."

Moreover, we hold trial counsel did not articulate a reasonable trial strategy for his failure to object. *See Abney v. State*, 408 S.C. 41, 46, 757 S.E.2d 544, 546-47 (Ct. App. 2014) ("Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness."). Trial counsel testified at the PCR hearing that his defense was to argue that Petitioner received his injury during an accidental shooting at the house a few days prior—a defense that was negated by the repeated references to "fresh" blood. He was unable to recall "what all was involved with" the testimony regarding the wall stains. Further, counsel stated that during the trial, the technical terms were "intermingled" and admitted he found the science of the evidence to be "complicated." Trial counsel did not articulate any reason for allowing the State and its witnesses to incorrectly characterize the nature of the evidence. *See Strickland*, 466 U.S. at 688 (explaining "the defendant must show that counsel's representation fell below an objective standard of reasonableness"). Accordingly, we hold the PCR court erred in finding trial counsel was not deficient for failing to object to the characterization of the stains as "blood" and "fresh blood."

Petitioner was prejudiced by trial counsel's failure to object because the misstatement of fact directly undermined Petitioner's only defense. *See Strickland*, 466 U.S. at 694 (stating a petitioner "must show that there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"); *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843 ("In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial In addition, the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury."). We acknowledge the State presented DNA evidence other than the wall stains linking Petitioner to the scene of the shooting as well as Victim's in-court identification of Petitioner as the person who shot him. However, Victim initially told Hayes that he did not know who shot him, and even after identifying Petitioner, Victim told Hayes he was not totally certain it was Petitioner. Furthermore, in *Smalls*, our supreme court noted that "eyewitness identification evidence is not conclusive." 422 S.C. at 194 n.8, 810 S.E.2d at 847 n.8. In addition, Petitioner's defense that he was shot at Victim's house several days before the incident at issue offered an alternative explanation for the presence of his DNA at the scene of the crime. *See id.* at 191, 810 S.E.2d at 845 ("[F]or the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as . . . DNA evidence *demonstrating guilt*" (emphasis added)). In support of his defense, Petitioner presented witnesses who testified that they observed his wound before the incident and others who testified they saw or heard from Petitioner at the time of the incident. We acknowledge the jury heard testimony that the wall stains were negative for the presence of blood. However, both the State and trial counsel subsequently and repeatedly referred to the substance as blood—most notably, in the State's closing argument, when it alleged "fresh body tissue and blood" was found on the wall and in Miller's rebuttal testimony that the blood was "fresh." We find the continuous, inaccurate references to "blood" on the wall and the arguments regarding the "fresh[ness]" of the "blood" significantly undermined Petitioner's defense. Finally, the impeachment of the defense witnesses may have weakened Petitioner's defense, thereby heightening the prejudicial effect of trial counsel's failure to object to the mischaracterization of the scientific evidence. *See id.* at 188, 810 S.E.2d at 843 ("[T]he court must analyze how individual errors of counsel affect the important factual findings in a particular case." (citing *Strickland*, 466 S.C. at 695-96)). Thus, we hold Petitioner was prejudiced by trial counsel's deficiency. Accordingly, we reverse the PCR court's order denying post-conviction relief and remand to the Court of General Sessions for a new trial.

REVERSED AND REMANDED.

WILLIAMS, C.J., and GEATHERS and TURNER, JJ., concur.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Certiorari from Greenville County

The Honorable G.D. Morgan, Jr., Trial Judge

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

Appellate Case No. 2021-001436

RONNIE C. SWOFFORD,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR REHEARING

On August 13, 2025, this Court reversed and remanded Petitioner's case for a new trial in an unpublished opinion. *Swofford v. State*, Unpublished Op. No. 2025-UP-294 (S.C. Ct. App. Filed February 5, 2025).

In reversing, this Court rejected the PCR court's ruling on both *Strickland* prongs. This Court 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. This Court further found that Petitioner was prejudiced by the failure to object because it "significantly undermined Petitioner's defense," and that the prejudicial effect of the failure to object was heightened by the impeachment of the defense witnesses. *Swofford*, at 7.

Pursuant to Rule 221(a), SCACR, Respondent respectfully petitions this Court for rehearing because this Court appears to have overlooked the relevant standard for evaluating

deficiency and applied a prejudice analysis that overlooks the circumstances of the evidence in this case contrary to *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984).

To be clear, the defense theory – and Petitioner himself – did not deny that his blood or DNA was at the scene, but an explanation was offered to why it would be there. Petitioner’s defense was that he had been in the victim’s home a few days prior to the incident and that the victim accidentally shot him. Petitioner reasoned and conceded at trial that he would not be surprised his blood was found at the scene considering the prior accidental shooting. His defense rested on the assertion that the substance identified on the wall of the crime scene - that was initially purported to be blood to the naked eye - was not fresh and supported his version of events. At trial, it was confirmed that the substance was not blood at all.

This Court identifies the evidence against Petitioner to be the victim’s identification of him and the presence of Petitioner’s DNA at the scene; however, this Court merely notes hesitancy in the victim’s initial identification. The evidence, however, must be viewed as collective rather than in isolate. The victim did make an identification and important to the analysis here, 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. Further yet, the location of the wound on Petitioner’s arm is consistent with the victim’s description and the trajectory analysis.

The State’s reference to the “fresh” blood in closing argument cannot reasonably have damaged Petitioner’s defense more so than his own version of events that he testified to along with his witnesses that were objectively discredited. Petitioner testified that the victim had accidentally shot him days prior to the incident and rather than seek medical attention, he went home to remove the bullet from his arm and proceeded to tell various stories to explain his wound. Considering

Petitioner'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 Petitioner's assertion that the victim did not want him to disclose that he had accidentally shot Petitioner. 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.

There is an understandable presumption of bias when the only corroborating testimony is from friends or family members but here, there was testimony that specifically indicated that the mother of Petitioner's child – and alibi witness - indicated that she would not tell the truth at trial and made threatening statements to another of Petitioner's witnesses in an apparent attempt to secure his favorable testimony for Petitioner. The limit in credibility was separate and apart from any forensic evidence. Further yet, an additional alibi witness testified that he felt that Petitioner was trying to manipulate him, and that he was scared to testify against him. Once again, that testimony does not relate to the forensic evidence and as discussed above, when Petitioner testified at trial, he did not contest that his DNA was found at the crime scene.

“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.” *Strickland* at 693. Trial counsel attacked the blood evidence, but again, it does not affect the alibi. *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. Here, the fact trial counsel did not challenge the solicitor's reference to the blood on the wall is not inconsistent with the alibi and does not 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. This panel's opinion fails to follow *Strickland's* established test.

Respondent respectfully submits that this Court overlooked the nature of the evidence presented in this case supporting Petitioner's conviction, and that Petitioner failed to show the outcome of his trial would have been different had trial counsel objected in the manner identified by this Court.

CONCLUSION

For all the above reasons, Respondent petitions for rehearing pursuant to Rule 221(a), SCACR, and requests this Court grant rehearing and reinstate Petitioner's convictions.

Respectfully submitted,

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August 28, 2025
Columbia, South Carolina

RECEIVED

Aug 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Certiorari from Greenville County

The Honorable G.D. Morgan, Jr., Trial Judge

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

Appellate Case No. 2021-001436

RONNIE C. SWOFFORD,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I, **Kaylee C. Kemp**, attorney for Respondent, hereby certify that the **Petition for Rehearing** been forwarded to Petitioner's counsel, Joanna Delany, Esq., and her legal assistant, Sara McInnis via email today, August 28, 2025, at jdelany@sccid.sc.gov and smcinnis@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 28th day of August 2025.

Kaylee C. Kemp

s/

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The South Carolina Court of Appeals

Ronnie C. Swofford, Petitioner,

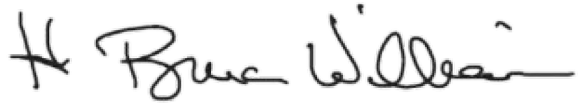
v.

State of South Carolina, Respondent.

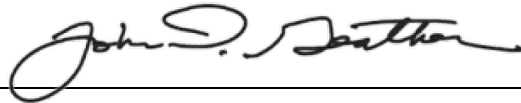
Appellate Case No. 2021-001436

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

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FILED
Sep 09 2025