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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO SUMTER COUNTY
Court of Common Pleas
The Honorable R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2025-000277

Rodney R. Green,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF THE ISSUES ON APPEAL

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

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

The PCR court properly found Counsel was not ineffective for failing to hire a firearms expert, where the testimony of Petitioner's expert at the PCR hearing was essentially duplicative of the testimony elicited at trial from the forensic pathologist, and where Petitioner's argument that the victim could have been killed by a shot from a revolver is purely speculative.

STATEMENT OF THE CASE

This case arises from a shooting on March 16, 2014, outside a venue called “Club Miami” in Sumter. Ray’Quann Jenkins and Tyrese “Stymie” Archie were both shot during the incident, the latter fatally. Applicant was caught and arrested at the scene.

Prior to the shooting, Petitioner and his girlfriend, Lavitra Harvin, attended an “all-white” party at Catchall Hall. (App.p.134). Petitioner was wearing a white shirt, white pants, and white shoes. (App.p.146). At around 1:45 a.m., Harvin left the all-white party and went to Club Miami with some girlfriends. (App.p.135). At some point, a fight broke out inside the club, so Harvin and her girlfriends decided to leave. (App.pp.137–39). Outside the club, Harvin observed “a lot of commotion.” (App.p.139). She heard gunshots and took cover beside a black truck, and she saw Ray’Quann Jenkins run past her saying he had been shot. (App.p.140). She also saw Petitioner running. (App.p.146). Harvin looked up and saw a gun being fired, but she testified that she could not see who fired the gun. (App.pp.141–46). On the stand, Harvin denied seeing Petitioner with a gun that night. (App.p.154). However, she admitted that, in her initial statement to law enforcement, she had identified Rodney Green as the shooter and said that she had seen him firing a gun and then running away. (App.p.156; p.164).

Ray’Quann Jenkins testified that he went to Club Miami with Tyrese Archie between 12:30 and 1:00 a.m. (App.p.191). As they were heading out of the club, they saw some of Archie’s cousins fighting in the outside parking lot. (App.p.194). Jenkins and Archie went over to the fight, and Archie asked the participants to stop and told everybody to get in their cars and leave. (App.p.196). The fight broke up, but while Jenkins and Archie were still standing in the parking lot three other people came around the front of the club and approached Archie. (App.p.199). The three newcomers attacked Archie, and a fist fight broke out. (App.pp.199–200). Jenkins tried to

break up the fight, but then four or five other people approached, including Petitioner. (App.pp.200–02). Petitioner said “You all watch out,” and Jenkins saw him reach into his shirt and pull out a gun. (App.pp.203–04). Jenkins did not see anyone else with a weapon. (App.p.204). Jenkins picked Archie up and pushed him away from the scene, and then he heard a gunshot. (App.p.204). The shot hit Jenkins in the left femur near the pelvis, and he fell forward. (App.p.206). Petitioner ran past him towards Archie, still carrying the black handgun, and Jenkins heard him fire it three or four times. (App.pp.207–10). After the firing stopped, Jenkins saw Petitioner running away from the scene pursued by a security guard. (App.pp.211–13). Jenkins testified Petitioner was wearing white pants, white shoes, and a white shirt. (App.p.214).

Myron Conyers and Patrick Washington, two security guards who worked at the club, testified that on the night of the shooting a fight broke out inside the club, and multiple people had to be escorted outside, where a second fight occurred. (App.pp.380–81; p.415). Auntachie Blanding, Davontae Blanding, and Demetrice Brooks also testified that a fight had occurred inside the club and that security had forced a number of people outside the club, where the fighting resumed. (App.p.273; pp.315–17; pp.348–49). They also testified that they saw Archie outside the club telling everybody to go home. (App.p.274; pp.316–17; p.349).

Brooks testified that, as she was getting in the car to leave, she looked back and saw Petitioner, dressed all in white, shooting a handgun three or four times, but she could not see who he was shooting at. (App.pp.278–79). Davontae testified that, just before the shooting, he saw a young lady run toward Petitioner screaming “don’t do it.” (App.p.353). He then saw Petitioner raise his arm and start shooting a handgun. (App.p.362). Davontae saw Archie running away, and Davontae followed him to see if he was all right. (App.p.364). Archie told Davontae, “He got me,” and ran to the back of the club, where he collapsed. (App.p.364).

Conyers testified he was outside the club trying to control the crowd when he saw an individual appear from the fence line, fire three shots into the crowd, and turn and run away. (App.p.381). Conyers and his fellow security guard, Washington, pursued the individual, and Conyers also saw a police officer arrive and join in the pursuit. (App.p.381). Conyers shined his flashlight on the fleeing individual, and Washington and the officer ran ahead and were able to catch him. (App.p.381). Conyers testified the fleeing individual was a black male dressed all in white. (App.p.386).

Washington testified he was in the parking lot dealing with an angry club patron when he heard shots and looked back to see a man dressed in all white shooting. (App.p.415). The shooter then started running off into a field, and Washington followed him, telling Conyers to keep his flashlight on the individual so Washington could see him. (App.pp.415–16). Washington saw a patrol car coming down the road, so he pointed at the person in the white outfit, and the car went to cut him off. (App.p.416). Petitioner stopped near a big dirt pile, and Washington saw him throw something. (App.p.416). Washington tackled Petitioner, and a police officer came over and arrested Petitioner. (App.pp.416–17).

Deputy Steven Pizzino testified that he and another officer, Corporal Lee, arrived at Club Miami in response to a call regarding a fight and shooting. Lee arrived first and radioed that the shooting suspect was running across a field wearing a white shirt and white pants. (App.p.242). Pizzino was scanning the field with his spotlight and saw an individual wearing a white shirt and white pants being chased by some other individuals. (App.pp.242–43). Pizzino got out of his vehicle and chased the suspect, catching him as he was trying to climb over a sand berm. (App.p.243). Pizzino identified the person he chased and arrested as Petitioner. (App.p.247).

Lieutenant Misty Lee testified that she received a call that night in regard to a fight in

progress at Club Miami, and she followed Pizzino and the security guards in pursuit of the suspect towards a group of sand berms. (App.pp.447–51). As Pizzino was chasing the suspect towards the front of the first berm, Lee went around the back of the berm, and she heard Pizzino making contact with the suspect and yelling commands at him. (App.p.451). In the valley between two berms, she saw a gun lying on the ground, and she photographed it and collected it as evidence. (App.pp.451–52). The gun was later determined to be a .45 caliber Smith and Wesson handgun, with a maximum capacity of ten rounds, and there were six unfired cartridges left in the magazine. (App.p.509). Three fired .45 caliber cartridge casings were recovered from scene and determined to have been fired by that gun. (App.pp.513–14).

Dr. Janice Ross testified as an expert in forensic pathology. (App.pp.619–20). On March 17, 2014, Dr. Ross examined the body of Tyrese Archie and determined the cause of death was a through-and-through gunshot wound that perforated the left lung. (App.pp.620–24). Dr. Ross testified it was “difficult to say” what caliber of bullet caused the wound because “skin is elastic, so it’ll move a little bit.” (App.p.623). However, she opined that the size of the wound was consistent with a “medium caliber,” such as .38 or .357. (App.pp.623–24). She testified the wound did not appear to be from a “large caliber” bullet like a .45 because the entrance wound measured .3 by .38 inches in diameter, but she could not rule out a .45 caliber bullet because the elasticity of the skin could have caused the dimensions of the wound to be smaller than the projectile. (App.pp.626–27).

Auntachie Blanding and Demetrice Brooks both testified that, as they were leaving the parking lot in Auntachie’s car, they saw a man with dreads, carrying two pistols, whom they identified as “Carter Man.” (App.pp.280–82; pp.325–27). Brooks testified Carter Man fired one shot at their car as they were driving away. (App.p.291–92). However, Brooks insisted that only

Petitioner could have fired the shot that killed Archie because of the relative positions of Archie, Petitioner, and Carter Man. (App.pp.305–06). Auntachie stated she did not hear any gunshots coming from Carter Man’s direction. (App.pp.328–29).

In July 2014, the Sumter County Grand Jury indicted Petitioner for murder, attempted murder, possession of a weapon during the commission of a violent crime, and possession of stolen pistol (2014-GS-43-0524). Charlie J. Johnson, Esquire (“Counsel”), represented Petitioner. Solicitor Earnest A. Finney, III, prosecuted the case. On November 9-11, 2015, Petitioner proceeded to a trial before the Honorable George C. James and a jury. The jury found Petitioner guilty on all four counts as indicted. The trial court sentenced Petitioner to life without the possibility of parole for murder, a concurrent sentence of thirty years for attempted murder, a concurrent sentence of five years for possession of a weapon during a violent crime, and time served for possession of a stolen pistol. Petitioner filed a timely notice of appeal. In an unpublished opinion filed May 9, 2018, the South Carolina Court of Appeals affirmed Petitioner’s convictions and dismissed his appeal. *State v. Green*, No. 2018-UP-187 (Ct. App. filed May 9, 2018).

Petitioner filed an application for post-conviction relief (“PCR”) on May 20, 2019, alleging various constitutional violations related to his charges. Through counsel, Petitioner filed an amended application on November 15, 2021, raising the following grounds for relief:

1. Trial counsel failed to conduct effective pre-trial investigations.
2. Trial counsel failed to collect and examine the projectiles that were fired from multiple guns at the scene of the crime.
3. Trial counsel failed to collect medical and autopsy records.
4. Trial counsel failed to interview witnesses who had favorable information that applicant did not commit the crime.
5. Trial counsel failed to investigate the ballistics from the night in question.
6. Trial counsel failed to identify the other individuals who were shooting guns.
7. Trial counsel failed to determine the caliber of the weapons the other shooters were firing.

8. Trial counsel failed to effectively cross-examine the State's witnesses.

An evidentiary hearing was held before the Honorable R. Kirk Griffin on June 15, 2023, at the Sumter County courthouse. At the hearing, Petitioner proceeded on the allegations raised in his amended application. Following the hearing, Judge Griffin issued an order denying and dismissing the PCR application with prejudice. Petitioner filed his petition for a writ of certiorari with this Court on February 27, 2026.

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). On the one hand, pure questions of law are reviewed *de novo* without deference to the lower court. *Id.* at 180–81, 810 S.E.2d at 839–40. On the other hand, the lower court’s findings of fact receive great deference during appellate review and will be upheld if “any evidence of probative value” exists in the record to support those findings. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016).

ARGUMENT

The PCR court properly found Counsel was not ineffective for failing to hire a firearms expert, where the testimony of Petitioner's expert at the PCR hearing was essentially duplicative of the testimony elicited at trial from the forensic pathologist, and where Petitioner's argument that the victim could have been killed by a shot from a revolver is purely speculative.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Where, as in this case, a PCR applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*: first, the applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *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*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel'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. "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." *Strickland*, 466 U.S. at 670. The applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRCP.

The only issue raised by Petitioner's petition for a writ of certiorari is whether the PCR court erred in finding Counsel was not ineffective for failing to retain a firearms expert. At the PCR hearing, Petitioner presented the testimony of Gary Chapin, an expert in firearms and ballistics, who testified about the differences between .45 caliber and .38 caliber projectiles and the differences between semi-automatic pistols and revolvers. Specifically, Chapin testified that a .45 caliber gun fires a projectile approximately .45 inches in diameter, and he noted that the autopsy report in this case measured the entry wound as .3 by .38 inches in size. He also testified that a .38 caliber revolver would not have ejected cartridge cases, unlike a .45 caliber semi-automatic pistol. Petitioner argues that Counsel was ineffective for failing to present equivalent testimony at trial because it could have established that Archie was not killed by Petitioner's .45 caliber gun, but by a .38 caliber revolver which did not leave any cartridge cases behind.

The PCR court found Petitioner did not meet his burden of proving prejudice from Counsel's failure to hire a firearms expert. As to the size of the victim's gunshot wound, the PCR court found Chapin's testimony was essentially the same as the trial testimony presented by Dr.

Janice Ross, the forensic pathologist who performed the victim's autopsy. At trial, Dr. Ross explained that the victim's gunshot wound measured .3 by .38 inches in diameter, and she opined that a wound of that size was most consistent with a "medium caliber" projectile such as a .38, a .357, or a 9 millimeter; by contrast, she testified that a .45 caliber projectile was a "large caliber," and she would not have expected a large caliber to leave a gunshot wound of such small dimensions. Nevertheless, she testified that she could not rule out a .45 caliber projectile because "skin is elastic so it can shrink a little bit." (App.pp.625-27). Counsel cross-examined Dr. Ross thoroughly on this point, even getting her to concede that, in her medical opinion, the .45 caliber rounds fired by Petitioner's gun "would not be the type of round that would be used in [this] case." (App.p.626, line 23-p.627, line 1). Counsel then relied on Dr. Ross's testimony extensively in his closing argument to the jury:

The police never even asked the doctor [were] the wounds consistent with the gun. They were just as shocked the other day as everybody in this courtroom when that doctor said that that gun, and the bullets from that gun, did not cause the injury to Mr. Archie, and cause his death. Caught them off guard. They didn't know what to do. The defense didn't put that up. That was the State's own evidence.

...

If that gun did not cause the crime, it's very simple for you. He's not guilty of murder. If you believe the doctor, and what the doctor said on the stand, being questioned by the solicitor, he's not guilty of murder. This case is really that simple. Regardless of whether you believe he had a gun and was shooting. And whether you believe that he didn't have the gun, if he didn't kill the man, he's not guilty of murder. Their own evidence stated that. They can't change what she said. And believe me, she's not a defense witness.

I think she said she's done thousands, thousands of these autopsies. This is the first time I ever heard her give me anything as a defense attorney that I could use. But she was always honest about her statement. She no had reason to be biased. She had no reason to say anything. She was an expert. And her statement was, it was a medium size to a small gun. And anybody that knows anything

about a gun, knows that a 45 is not a medium or small gun. And these rounds, 45's, are not small ammunitions. This is a large caliber gun, with large ammunition. And the forensic expert stated that it was her medical opinion, that that gun did [not] cause the death of Mr. Archie.

(App.pp.783–84).

Although Counsel clearly had no trouble handling the State’s forensic expert, Petitioner claims Counsel was deficient for failing to hire an expert witness of his own. At the evidentiary hearing, Counsel testified he was retained, not appointed, and although he was able to hire a private investigator, he “did not have the funds to hire any additional experts.” (App.pp.1048–49). Petitioner claims this was not an “objectively reasonable” rationale for failing to hire an expert. Petitioner cites *Hinton v. Alabama*, 571 U.S. 263, 274 (2014), for the proposition that a “trial attorney's failure to request additional funding in order to replace an expert he knew to be inadequate because he mistakenly believed that he had received all he could get under Alabama law constituted deficient performance.” However, *Hinton* clearly does not apply to the current case. For one thing, the *Hinton* court pointed out that Alabama had a statute expressly allowing appointed counsel to request additional funding, so the attorney in that case committed an error of law in simply assuming that he would not receive the funds necessary to hire an adequate expert. “The only inadequate assistance of counsel here was the inexcusable mistake of law—the unreasonable failure to understand the resources that state law made available to him—that caused counsel to employ an expert that he himself deemed inadequate.” *Id.* at 275. Petitioner has utterly failed to show that Counsel in his case was in a similar position to the attorney in *Hinton*.¹

¹ It should be noted that the Alabama statute in *Hinton* only applied to appointed counsel representing indigent defendants, so even under that statute, a retained attorney like Counsel would not be entitled to request additional funding. See Ala. Code § 15–12–21.

Second, the facts of *Hinton* represent a classic “battle of the experts” case, where the entire prosecution relied solely on expert testimony:

The six bullets and the revolver were the only physical evidence. Besides those items, the police found no evidence at the crime scenes that could be used to identify the perpetrator (such as fingerprints) and no incriminating evidence at Hinton's home or in his car. The State's case turned on whether its expert witnesses could convince the jury that the six recovered bullets had indeed been fired from the Hinton revolver. According to the Alabama Supreme Court, “the only evidence linking Hinton to the two murders were forensic comparisons of the bullets recovered from those crime scenes to the Hinton revolver.”

Id. at 265–66. That is not the case here, where the State’s case was based on the testimony of numerous eyewitnesses and where Petitioner was actually apprehended at the scene of the crime by law enforcement.

Finally, in *Hinton*, the applicant called three expert witnesses at his PCR hearing, all of whom totally contradicted the testimony given by the prosecution’s experts at trial. *Id.* at 270. Here, on the contrary, the testimony of Petitioner’s expert and the State’s forensic pathologist was substantially identical. Like Dr. Ross, Chapin explained that .45 caliber bullets are larger than the dimensions of the victim’s gunshot wound. Also, like Dr. Ross, Chapin admitted that a bullet passing through an elastic medium like skin could leave a hole that was smaller than the diameter of the bullet. The PCR court found Chapin’s testimony on this point was “entirely cumulative to the testimony of Dr. Ross, which Counsel reasonably elicited and exploited on cross-examination and in his closing argument.”

“*Strickland* does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense. In many instances cross-examination will be sufficient to expose defects in an expert's presentation.” *Harrington v. Richter*, 562 U.S. 86, 111 (2011). The fact that Counsel did not request additional funding (which

he likely would not have received, being retained) to hire an expert does not render him *per se* ineffective. As the PCR court noted, Counsel ably elicited practically the same information Chapin presented at the evidentiary hearing, merely by cross-examining Dr. Ross. This case presents one of the “many instances” where cross-examination, rather than presenting “an equal and opposite expert from the defense,” suffices to provide the degree of adversarial testing envisioned by the right to counsel. *Id.*

Furthermore, because the testimony of Chapin was so similar to the testimony Dr. Ross gave at Petitioner’s trial, the PCR court found Petitioner had not met his burden of proving that the presentation of this duplicative evidence would “create a reasonable probability of a different result” at trial. As Petitioner failed to prove prejudice, the PCR court found Counsel was not ineffective. This finding is clearly proper and supported by substantial probative evidence in the record.

Petitioner now admits that “the PCR court was correct” in determining that trial counsel successfully elicited from Dr. Ross practically the same testimony as that offered by Chapin at the evidentiary hearing, at least regarding the size of the gunshot wound. (Pet.p.15). However, Petitioner argues that Chapin’s testimony could have strengthened his defense in other ways. First, Petitioner notes Chapin’s “valuable testimony that the .45 firearm recovered was not capable of firing a .38 bullet.” (Pet.p.14). Far from being “valuable,” this information appears to have been conceded by every party at Petitioner’s trial. The State never attempted to argue that Petitioner’s .45 caliber handgun had somehow, inexplicably, fired a .38 caliber bullet. On the contrary, the solicitor argued that the victim was killed by a .45 caliber bullet, but the resulting gunshot wound was smaller because, as Dr. Ross testified, “skin is elastic. And in this particular case, it could have stretched and gone back.” (App.p.773, lines 7–9). Counsel also relied on the common-sense

notion that a .45 caliber handgun could not have fired a .38 caliber bullet, arguing that it was “a large caliber gun, with large ammunition. And the forensic expert stated that it was her medical opinion, that that gun did [not] cause the death of Mr. Archie.” (App.p.784, lines 17–20).

Next, Petitioner argues Chapin’s testimony would have helped the defense because he established that a revolver, unlike a semi-automatic pistol, does not automatically eject cartridge casings when fired. Petitioner claims this evidence benefits the defense because it would leave open the possibility that Archie was shot with a .38 caliber weapon even though no .38 caliber cartridge casings were ever found; if somebody had used a .38 caliber *revolver* to kill Archie, it would not have left cartridge casings at the scene.

The PCR court, however, found this theory was purely speculative. Other than the *lack* of .38 caliber shell casings, there was no evidence to suggest a revolver of any kind was used in the shooting. The only other individual seen carrying a weapon that night was “Carter Man,” and the PCR court noted he could not have been the person who killed Archie:

First of all, there is no evidence in the record that “Carter Man” was armed with a revolver, much less a .38 caliber revolver, as Applicant now speculates. Second, multiple witnesses denied hearing or seeing any shots fired by anyone other than Applicant on the night of the shooting. The only witness at trial who claimed to see “Carter Man” fire a shot was Demetrice Brooks, and she was adamant that Applicant—not “Carter Man”—was the person who shot Archie. Finally, Counsel credibly testified that he investigated the possibility that “Carter Man” was the shooter, but his investigator determined that the direction in which “Carter Man” allegedly fired a shot would not have put him in a position to hit Archie, which is consistent with Brooks’ testimony that “Carter Man” could not have fired the shot that killed Archie. On the other hand, there was substantial direct evidence from multiple witnesses that Applicant fired numerous shots in the direction of Archie.

(App.pp.1095–96). Consequently, the PCR court found Petitioner had failed to prove the use of Chapin’s testimony at trial would have led to “a reasonable probability of a different result.” This

finding is properly supported by the substantial evidence presented at trial and should not be disturbed on appeal.

For all these reasons, the PCR court correctly found Petitioner failed to prove his allegations of ineffective assistance of counsel as required by *Strickland*. Because Petitioner has not established any error in the decision of the PCR court, the State asks this Court to deny the petition for a writ of certiorari.

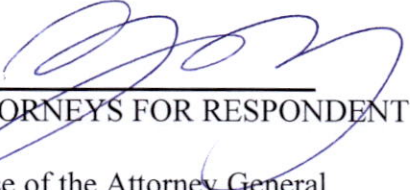
CONCLUSION

For the foregoing reasons, this Court should deny this Petition for Writ of Certiorari. Should this Court grant the petition, the State seeks permission to more fully brief the issues herein.

Respectfully submitted,

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