

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

ORIGINAL

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S.C. SUPREME COURT

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000508

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in conceding petitioner's guilt during opening arguments by stating to the jury that blood found at the crime scene belonged to petitioner because there was no finding of blood evidence within its traditional meaning at the scene.

STATEMENT

Petitioner Ronnie Cleveland Swofford, Jr., was convicted of first degree burglary, assault and battery with intent to kill, assault 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 May 2012 term of the Greenville County General Sessions Court before Judge Edward W. Miller. Petitioner was sentenced to two concurrent life without parole sentences, ten years on the AWIK conviction, and five years on the conviction of possession of a pistol by a person convicted of a violent crime. Petitioner was not sentenced on the weapon conviction after receipt of his life without parole sentences. App. 1-755. Andrew J. Johnston represented petitioner at trial and Assistant Solicitor Kris Hodge appeared on behalf of the state. Petitioner appealed, but subsequently withdrew his appeal. An order dated June 23, 2014 was issued by the Court of Appeals therein dismissing the direct appeal. Lanelle C. Durant, Esquire, of the South Carolina Office of Appellate Defense, represented petitioner on appeal before the appeal was dismissed.

On July 8, 2014, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 757-763. The respondent filed a return dated January 13, 2015, requesting that a hearing be held in the case. App. 764-770. A PCR hearing was held on October 21, 2015, before Judge Perry H. Gravely at the Greenville County Courthouse. App. 772 – 850. Petitioner was present at the hearing and represented by R. Mills Arial, and Assistant Attorney General Karen Ratigan appeared on behalf of the state. On December 30, 2015, Judge Gravely issued an Order of Dismissal therein denying petitioner's PCR allegations in the case. App. 852-862. Judge Gravely denied petitioner's Motion for Reconsideration by Order dated February 17, 2016. App. 863-893. Petitioner appealed the Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in conceding petitioner's guilt during opening arguments by stating that the blood found at the crime scene belonged to petitioner because there was no finding of blood evidence within its traditional meaning at the scene.

The state's case included testimony from Curtis Wooten, who stated that a masked man wearing all black entered his house around 3:00 am on July 27, 2009, and fired gunshots at him and his girlfriend Rikki Danielle Edwards, but that he fired shots back at the gunman. App. 59, l. 5 – p. 75, l. 17. The return gunfire left human tissue evidence at the crime scene (genetic material from a hair fiber found on the kitchen wall, and a bullet jacket/casing, and cloth cutting from the same area) that matched petitioner's DNA. The exchange of gunfire occurred in the kitchen area of Wooten's home and as a result, the kitchen wall was photographed and canvassed for evidence. The evidence submitted at trial basically revealed that no blood was found on the crime scene wall and therefore, no blood matching petitioner's DNA was found at the crime scene. Wooten was struck by a bullet during the melee, but Edwards did not receive any gunshot injuries. Petitioner claimed an alibi defense and denied that he was the shooter, and added further that any genetic material found on any human tissue from a bullet casing and a cloth cutting and a hair fiber from the crime scene wall had been left there six days earlier when Wooten shot him during a prior visit to Wooten's house.

At trial, Wooten testified that he recognized the voice of the gunman as petitioner's voice and that he recognized the shooter's gun as a gun that belonged to petitioner. App. 72, l.24 – p. 73, l. 13. App. 70 l. 17 – p. 71, l. 7. Wooten explained that he loaned petitioner \$750.00 before the shooting and had been trying to reach petitioner for repayment. App. 67, l. 1 – p. 69, l. 14.

Since the shooting in this case obviously occurred in the kitchen area of the house, the kitchen wall was inspected for the existence of forensic evidence. Thereafter, a hair fiber was found on the wall. The only other forensic evidence found at the scene included a bullet jacket/casing and a cloth cutting (table cloth blanket material) found in the kitchen area. SLED processing technician Verona Gibbs testified that she processed the kitchen wall looking for blood and found only a hair fiber there. Ultimately, the fiber was found to have matched petitioner's DNA; however, there was no testimony by Gibbs indicating that blood was found on the wall. App. 254, l. 8 – p. 262, l. 9. Also, SLED forensics DNA expert Adrian Heffney testified that a swab taken from the bullet casing found in that area and a cutting from a cloth there also matched petitioner's DNA. App. 273, l. 2 – p. 282, l. 12.

Clearly, at no point was there any blood evidence submitted at trial as having been found on the kitchen wall at the crime scene. Note that during opening arguments, the solicitor never stated that petitioner's blood was found on the wall. Instead, the solicitor stated that a splatter (not identified conclusively as being blood) was found on the kitchen wall and that body tissue and hair found at the scene contained the DNA of petitioner. App. 48, lines 7 – 9. Note moreover at closing, that the solicitor again never argued that petitioner's blood was found on the kitchen wall. Rather, the solicitor argued that petitioner's DNA was found on the bullet jacket found in the kitchen area and on a hair fiber found on the kitchen wall. App. 723, lines 13-14.

Nevertheless, despite the fact that no blood evidence within the traditional definition containing petitioner's DNA was found on the kitchen wall, defense counsel conceded petitioner's guilt during opening argument by stating that there was blood found on the kitchen wall at the crime scene and that said blood belonged to petitioner. Counsel's opening remarks in question follow:

The question that I'm going to put to you in this case is not whose blood was found in the residence of Curtis Wooten the police. I'll answer that question for you right now. The blood and tissue that was found in the home of Curtis Wooten belonged to my client, i.e., petitioner. App. 49 lines 15 – 20.

During the PCR hearing held in the case, petitioner testified in effect that since there was no evidence of blood found on the crime scene wall, then there was no evidence that his (petitioner's) blood was on the wall and that as a result, counsel erred in conceding his guilt by stating to the jury that blood was found on the wall at the crime scene, and further, that the blood at the scene belonged to him (petitioner). App. 785, l. 17 – p. 786, l. 25; App. 790, l. 23 – p. 791, l. 6. Petitioner stated that only genetic material from the hair fiber and bullet casing matched his DNA. App. 810, l. 8 – p. 812, l. 6.

Regarding the issue of conceding petitioner's guilt, trial counsel admitted error and responded as follows:

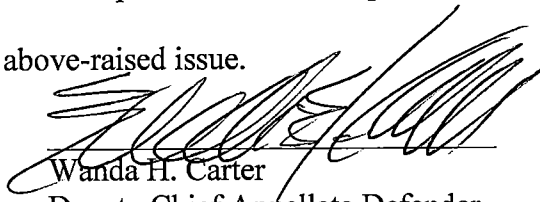
I guess it's possible that during the trial that the term blood might have got intermingled with the term genetic material. App. 847, lines 14-18.

The state's evidence against petitioner was not overwhelming as the state's case consisted primarily of Wooten's voice and gun identifications and the razor thin forensic (genetic) evidence only. Thus, counsel's failure to draw a clear distinction between genetic material allegedly containing petitioner's DNA found at the scene, and traditional blood evidence, which for all practical purposes can be seen as more definitive and damaging with respect to evidence, that was not found at the scene constituted deficient legal representation at trial, particularly since there was no blood evidence within the traditional definition found on the kitchen wall at the crime scene. Therefore, counsel's words that ended up conceding petitioner's guilt via the negligent and careless summary of the forensic evidence in the case constituted error that

resulted in irreparable prejudice to petitioner's defense. The prosecution has the burden of proving every element of the offense charged beyond a reasonable doubt at trial. Jackson v. Virginia, 443 U.S. 307 (1979). Thus, to assign guilt to petitioner and concede the case against him by informing the jury of blood evidence linking him to the crime when said blood evidence was non-existent clearly constituted ineffective assistance of counsel. This violated petitioner's right to competent counsel at trial under the Sixth Amendment. See Strickland v. Washington, 466 U.S. 668 (1984). But for counsel's error, a reasonable likelihood exists that the outcome of the trial would have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of February, 2017.

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronnie C. Swofford states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's trial before Judge Perry H. Gravely, which was held on October 21, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Ronnie C. Swofford.

Respectfully Submitted,

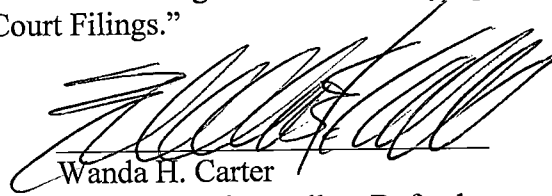

Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of February, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson 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."



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Justin Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Ronnie C. Swofford, #218281, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of February, 2017.

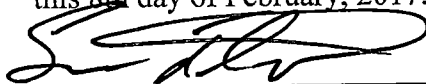


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 8th day of February, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022.