

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Apr 22 2024

On Petition for Writ of Certiorari to Horry County S.C. SUPREME COURT

The Honorable Steven H. John (Trial Judge)
The Honorable D. Craig Brown (PCR Judge)
The Honorable H. Steven DeBerry, IV (PCR Judge)

Appellate Case No. 2023-000522

HENRY DUKES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE**

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STATEMENT OF ISSUES ON CERTIORARI

PETITIONER'S ISSUE 1 PRESENTED

Whether the court erred (sic) denying post-conviction relief where Cornelius Ford testified at the Neil v. Biggers hearing that he identified Petitioner when the detective opened his file to make notes and he just happened to see a photograph of Petitioner in the file, where counsel failed, during the Biggers hearing, to show the trial judge a video recording of Ford's interview that instead showed Ford opened and looked through the file while the detective was out of the room, and where there was a reasonable likelihood the result of the trial would have been different absent counsel's deficient performance?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE 1

The PCR court correctly denied relief because there is no reasonable likelihood that the outcome of either the Biggers hearing or his trial would have been different had trial counsel presented the interview video during the Biggers hearing?

PETITIONER'S ISSUE 2 PRESENTED

Whether the court erred in denying post-conviction relief where counsel failed to present evidence that Petitioner tested negative for gunshot residue, where counsel admitted his failure to present this evidence was not strategic, and where there was a reasonable likelihood the trial result of the trial would have been different absent counsel's deficient performance?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE 2

The PCR court correctly denied post-conviction relief because trial counsel strategically used the absence of the gunshot residue test result by eliciting testimony that law enforcement did a gunshot residue test on Petitioner several hours after the murder, and then arguing in closing that the jury could infer Petitioner's test was negative based on the State's failure to it, and Petitioner failed to prove there is a reasonable likelihood the trial result would have been different if trial counsel had presented the test document itself as evidence.

STATEMENT OF THE CASE

Respondent concurs with Petitioner's procedural history as set forth on pages 2-4 of the Petitioner for Writ of Certiorari Pursuant to Austin v. State. The procedural history is lengthy and somewhat convoluted, and Respondent will only address the trial and post-conviction relief proceedings that are relevant to the Austin v. State issues.

STATEMENT OF FACTS

Trial

Petitioner was indicted in 2008 for the 2007 shooting murder of Andy Gowen, and the case proceeded to a jury trial in 2011 before the Honorable Steven H. John, Circuit Court Judge. Petitioner was represented by J. Eric Fox, Esquire ("trial counsel"), who filed eight pre-trial motions, including a motion to exclude an out-of-court identification of Petitioner as the murderer by Cornelius Ford ("Ford") on the ground the identification was based on an unduly suggestive identification procedure.

Judge John conducted a hearing as required by Neil v. Biggers, 409 U.S. 188 (1972), to determine if Ford's out-of-court identification of Petitioner was tainted by a law enforcement unduly suggestive identification procedure.¹ Ford testified about what happened leading up to his identification of Petitioner as the shooter. When being interviewed the day of the murder, Ford told the detective he had seen the shooter before and would recognize him if he saw a photograph,

¹The detective who interviewed Ford was unavailable to testify at trial because he was deployed to Afghanistan. Trial counsel vehemently argued the detective's testimony was necessary for the Biggers hearing, but Judge John ruled the detective's testimony was not necessary in light of everything presented at the hearing. That issue was presented in Petitioner's direct appeal from his conviction, the court of appeals affirmed Judge John's ruling, and this Court denied certiorari. (Appendix, pp. 402-515).

Ford stated that when the detective got up to go get some photo books for Ford to review, Ford saw several photographs fall out of the detective's file, and he immediately told the detective he recognized Petitioner's photo.

Ford testified he had ample opportunity to observe the shooter, no one told him to pick Petitioner's photo, and he was 100% certain Petitioner was the man he saw shoot Andy Gowen. After Ford described what happened before he picked out Petitioner's photo, the State asked: "the first room that you were in, which you were being video-recorded, video and audio recorded," "[n]ow your video does not show this, does it?" Ford responded that the video did not show it because they moved to a different room at some point. (Appendix, pp. 30-37).

Trial counsel cross-examined Ford about differences between Ford's testimony and the detective's written report regarding the interview. Counsel also asked Ford if he knew his interview was "on tape, that's recorded." (Appendix, pp. 37-43).

Ford's father testified he accompanied Ford to the police department several hours after the shooting and was present when Ford identified Petitioner as the shooter. He stated there were "pictures that were on the table," and Ford recognized Petitioner's picture. He said he and the detective asked Ford several times if he was sure Petitioner was the person he saw commit the murder, and Ford repeatedly told them he was sure. On cross-examination, trial counsel asked the father if he knew Ford's statement to the detective was recorded, and the father responded that he did not. (Appendix, pp. 43-49).

After considering the factors required by Biggers, Judge John found the out-of-court identification process was not unduly suggestive and denied Petitioner's motion to suppress the identification. He specifically found it did not appear there was any corrupting, intentional or

deliberate act by the police, and Ford's viewing of the photographs "was either done accidentally through the looking at a file or in a process that the Court finds was not suggestive in any manner." (Appendix, pp. 50-55).

After Ford testified during trial, defense counsel cross-examined him extensively regarding the circumstances of his out-of-court identification of Petitioner as the shooter, including differences between his statement to the detective and his trial testimony. At one point, the jury was excused so defense counsel could "set up some equipment." When testimony resumed, defense counsel questioned Ford about something projected on a "screen," and asked if he recognized the "setting" and who was in "that frame." (Appendix, pp. 159-184).

Another State's witness (Heester) testified that on the morning of the murder she was visiting a friend who lived a short distance from where the murder occurred. When she was knocking on the friend's door, she saw a man running toward a house about two or three backyards from her friend's house, he stopped when he saw her standing on her friend's porch, and then ran away. She was not able to see the man's face, but she gave a general description of the man and what he was wearing. She was never shown any photographs by the police and never identified Petitioner as the man she saw that morning. (Appendix, pp. 245-259).

The jury convicted Petitioner of murder, and Petitioner appealed. The issue on appeal was whether Judge John erred in failing to suppress the out-of-court identification process. The court of appeals affirmed, finding Judge John expressly considered the discrepancies between the detective's report and the pre-trial testimony, and there was evidence to support Judge John's ruling that the identification process was not impermissibly suggestive. The supreme court denied Petitioner's petition for certiorari to the court of appeals. (Appendix, pp. 394-515).

PCR Proceedings²

Petitioner filed multiple PCR applications, including an application in 2013 (2nd PCR Application), and a federal habeas petition. At a PCR hearing in February 2016 on the 2nd PCR application before the Honorable D. Craig Brown, Circuit Court Judge, trial counsel testified the State had listed as trial witnesses the SLED officials who processed Petitioner's gun residue test, which was negative for residue, but did not call them. Counsel did not subpoena the officials for trial because he anticipated their presence at trial as witnesses for the State, but he was able to get another State's witness to testify that police did a gunshot residue test on Petitioner several hours after the shooting. He then argued in closing that the jury could infer the test result was negative because the State would have produced a report if it was positive. (Appendix, pp. 542-547).

As to Ford's out-of-court identification of Petitioner, trial counsel testified he had the video recording of Ford's interview at the police station, which showed the detective walking out of the interview room and Ford rifling through the detective's file rather than the photographs falling out of the file onto the table. He further testified the video was inconsistent with Ford's testimony at the Biggers hearing, the video was played for the jury, and he impeached Ford with his prior written and oral statements. (Appendix, pp. 547-549).

By written order filed March 10, 2016, Judge Brown dismissed the 2nd PCR Application, finding trial counsel's testimony regarding his trial strategy and how he presented or attempted to present certain evidence was credible, and he articulated a valid trial strategy in line with the prevailing norms of professional conduct. Judge Brown further found Petitioner's hearing

²The multiple applications and habeas petition are summarized in the procedural history set forth at pages 2-4 of the Petition for Writ of Certiorari Pursuant to Austin v. State.

testimony was not credible, and he presented no evidence trial counsel represented him in a manner that was “anything but professional and beneficial,” or that a different attorney would have changed the trial results. (Appendix, pp. 574-580). There was no appeal filed.

Thereafter, Petitioner filed a PCR application in 2019 (4th PCR Application) alleging his 2016 PCR counsel was ineffective for failing to file an appeal from the order dismissing the 2nd PCR Application. At a PCR hearing in June 2020 before the Honorable Steven DeBerry, Circuit Court Judge, the State conceded Petitioner had not been afforded his right to appeal from the order dismissing his 2nd PCR Application, and was therefore entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (Appendix, pp. 715-720).

Petitioner testified at the hearing that trial counsel was ineffective by failing to impeach Heester’s trial testimony with fraudulent check charges to which she pled guilty five days before the trial, and that the State acted improperly by failing to turn provide that information to trial counsel. He stated his friend discovered the information through a Google search in 2019. (Appendix, pp. 725-737).

Trial counsel testified he did not recall having a criminal history report on Heester, and fraudulent check charges would have qualified as impeachment convictions as crimes of dishonesty that he would have used if he had known about them. He stated that he did not see Heester’s testimony “as quite as big a piece of evidence, but it certainly became at the end,” due to the State’s use of it in closing argument. On cross-examination, he testified he did not ignore Heester’s statement, but her description of the man she saw was very “non-specific” and the timeframe she provided was not exact. He further stated he received the witness criminal record reports before trial, and receiving them from the State had never been an issue during his career

working in that circuit. (Appendix, pp. 737-741).

Solicitor Jimmy Richardson testified it was his general practice to have someone run a criminal history on every witness (prosecution and defense) and turn the reports over to the defense. According to the case records, Heester's criminal history was run on August 1, 2011, and the report did not include any convictions. The Solicitor testified the fraudulent check charges Petitioner referenced were apparently in city court, which would not be reflected on a criminal history report. The information Petitioner's friend found in 2019 was located on the county's public index, which is accessible to the public at large, and the solicitor's office does not routinely check the public index. The Solicitor further testified Heester did not know Petitioner, Ford or the victim, and she was only able to testify about seeing a young black male running away from the victim's house. He then recounted other evidence in the case that pointed to Petitioner as the shooter, including his confession to a friend in Miami. (Appendix, pp. 742-749).

By Order filed February 27, 2023, Judge DeBerry granted Petitioner's request for an Austin appeal from the dismissal of his 2nd PCR Application, but denied relief as to 2019 PCR claims regarding ineffective assistance of counsel for failing to impeach Heester at trial and alleged prosecutorial misconduct. The Order recited the procedural history of Petitioner's trial and direct appeal, his four PCR applications and his federal habeas action, and summarized the PCR hearing witnesses' testimony. The Order stated Judge DeBerry had reviewed "the record in its entirety," observed the witnesses who testified at the hearing and closely passed upon their credibility, and weighed the testimony accordingly. (Appendix, pp. 758-765).

As to Petitioner's prosecutorial misconduct claim, Judge DeBerry denied relief based on his finding as credible the Solicitor's testimony that he gave trial counsel Heester's criminal history

report, which showed no criminal convictions. He further found that because the report showed no convictions, even if it was not given to trial counsel, any error was harmless and not material. (Appendix, pp 766-767).

Judge DeBerry also denied relief as to Petitioner's ineffective assistance of counsel claim asserting trial counsel failed to investigate Heester's criminal history on the public index. He found that trial counsel acted reasonably in relying on the criminal history report for purposes of his understanding of Heester's criminal record, but even if trial counsel was deficient, there was no prejudice to Petitioner in light of the overwhelming evidence of guilt such that impeachment of a minor State witness would not change the outcome. (Appendix, pp. 767-770).

Finally, Judge DeBerry dismissed Petitioner's assertion of newly discovered evidence regarding Heester's fraudulent check convictions, finding the evidence could have been discovered prior to trial. He further found the evidence was not material and would not have changed the trial outcome. (Appendix, pp. 770-772).

Petitioner filed a Petition for Writ of Certiorari and a Petition for Writ of Certiorari Pursuant to Austin v. State on November 13, 2023. The State submits this Return to Petition for Writ of Certiorari Pursuant to Austin v. State.

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 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, 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, 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, 806 S.E.2d 713, 723 (2017) (the PCR court found the case 'came down to the victim's believability and credibility'). Pure questions of law will be reviewed *de novo* without deference to the lower court, and appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Smalls, 810 S.E.2d at 839-40; Goins v. State, 397 S.C. 568, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court correctly denied relief because there is no reasonable likelihood that the outcome of either the Biggers hearing or Petitioner's trial would have been different had trial counsel presented the interview video during the Biggers hearing.

In evaluating allegations of ineffective assistance of counsel, the PCR 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, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* 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, 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," and "[e]ven if a defendant shows that particular errors of counsel were unreasonable, [he] must show that they actually had an adverse effect on the defense." Hill v. Lockhart, 474 U.S. 52, 58 (1985) (quotation omitted).

Petitioner argues Judge Brown erred in finding trial counsel was not ineffective when trial counsel failed to provide "critical information" (the video of Ford's interview) to Judge John during the Biggers hearing because it "went directly to the suggestiveness of the identification

procedure.”³ Petitioner then makes the purely speculative assertion that Judge John would have excluded Ford’s identification if he had seen the interview video.⁴

In ruling the out-of-court identification was admissible, Judge John found Ford testified he was present during the shooting and paying close attention to the shooter, he had seen Petitioner on prior occasions, he gave an accurate description of the shooter to law enforcement the day of the shooting, and he was 100% certain Petitioner was the person he saw shoot the victim.⁵ Judge John further found there was no intentional or deliberate act by law enforcement that corrupted Ford’s identification of Petitioner’s photo, and “[t]he seeing of the photographs was either done accidentally through the looking at a file or in a process that the Court finds was not suggestive in any manner.” (emphasis added) (Appendix, pp. 50-55).⁶

³Petitioner’s argument is premised on his assertion the video showed Ford looking through the file while the detective was out of the room rather than the photos falling out of the file onto the table as Ford testified at the Biggers hearing.

⁴Petitioner ignores both the State’s and trial counsel’s references during the Biggers hearing to Ford’s interview being recorded. (Appendix, pp. 36, 41, 47-48). The video was then played for the jury during trial. (Appendix, pp. 182-184, 547-548). At best, as described by Petitioner, the video showed Ford going through the file while the detective was out of the room, which is not intentional or deliberate state action of any kind.

⁵ Petitioner asserts the only description Ford gave to law enforcement was “that he had a big mouth and funny accent.” It appears from the record that Ford also described the man he saw as dark skinned, stocky, and a little taller than Ford, and he gave the man’s approximate age. (Appendix, pp. 185-187).

⁶ Judge John’s reference to “looking at a file” supports an inference that he knew about and saw the interview video before ruling at the Biggers hearing. Further, given the fact Judge John allowed the video to be played for the jury indicates he was aware of it and knew what it showed. If Judge John had not seen the video and that it showed something he was not aware of at the Biggers hearing that would have changed his ruling, it is a reasonable assumption Judge John would have halted the proceedings to deal with it.

Petitioner now argues that the detective's failure "to secure his file when he left the interview room" somehow rises to the level of improper and unnecessarily suggestive law enforcement activity that tainted Ford's out-of-court identification because Ford "capitalized" on it. In essence, he contends any mere police negligence constitutes improper and unnecessarily suggestive police activity, but he cites no authority for his argument.⁷

Indeed, relevant case law clearly establishes that due process concerns regarding out-of-court identifications "come into play only after the defendant establishes improper police conduct" in arranging "the circumstances surrounding an identification." Perry v. New Hampshire, 565 U.S. 228, 242 (2012) (emphasis added); State v. Liverman, 398 S.C. 130, 727 S.E.2d 422, 427 (2012) (identification reliability determination is required when it was obtained "under unnecessarily suggestive circumstances arranged by state action" (emphasis added) (*citing Perry*). Arranging something indicates orchestrating or planning it. See <https://www.merriam-webster.com/dictionary/arrange>. There is no evidence in this case that the detective, or any other law enforcement official, arranged, orchestrated or planned the circumstances leading to Ford seeing the photographs in the detective's file, or that the detective had any reason to think Ford would go through the file while the detective was out of the room.

Trial counsel filed multiple pre-trial motions, including a motion to exclude Ford's identification testimony. Judge John conducted a proper Biggers hearing, during which trial counsel attacked Ford's credibility and highlighted several significant differences between Ford's

⁷Trial counsel's hearing testimony regarding his interpretation of Ford's conduct while the detective was out of the room does not even suggest the detective in any way attempted to steer Ford to pick Petitioner's photo out of the four of five photos in the file, or even that the detective somehow knew Ford was going to go through the detective's file. (Appendix, pp. 547-548).

hearing testimony and the detective's written report about the interview. Even assuming for purposes of argument that the interview video shows exactly what Petitioner says it does, it would not establish that Ford's selection of Petitioner's photo was arranged by any improper state action leading to it.

Further, assuming for argument only that there was even a hint of suggestive and unnecessary police action leading to Ford's selection of Petitioner's photo, Judge John set out other circumstances indicating Ford's identification of Petitioner was reliable, including his opportunity to observe the shooter during the murder,⁸ his recognition of Petitioner from previous times he saw him, the accuracy of the description of the shooter he gave to law enforcement the day of the murder, and the level of his certainty (100%). Significantly, Petitioner does not challenge those reliability findings. Thus, Ford's identification of Petitioner as the shooter would have been admitted as evidence based on these indicia of reliability alone and the result would have been the same. *See State v. Govan*, 372 S.C. 552, 643 S.E.2d 92, 95 (Ct. App. 2007) ("The query posited is whether under the totality of the circumstances the identification was reliable even though the confrontation procedure may have been suggestive.").

The record amply supports Judge Brown's finding that trial counsel was not ineffective in connection with Ford's out-of-court identification, but made a "very competent argument" to exclude it at the Biggers hearing, and he had a "valid and clearly articulable trial strategy that was in line with the prevailing norms of professional conduct." Judge Brown further found that even assuming a deficiency in trial counsel's representation, Petitioner "failed to prove that he was in

⁸Petitioner's assertion that because the shooter pointed the gun at him, Ford's focus "would have been on the weapon at that time" rather than the shooter's face is nothing more than rank speculation.

any way prejudiced by trial counsel’s representation,” and “presented no evidence of trial counsel representing him in a manner that was anything but professional and beneficial” or “that a different attorney would have changed the result of his proceedings.”⁹

Judge Brown properly found Petitioner failed to meet either prong of Strickland – deficient performance by trial counsel, or prejudice from trial counsel’s performance – in relation to the out-of-court identification. Accordingly, the Petition should be denied on this issue.

⁹In order to claim there is a reasonable likelihood of a different result if Ford’s identification of him as the shooter had been excluded, Petitioner ignores or discounts other strong evidence of Petitioner’s guilt, including: Ford’s description of the shooter and the shooter’s white coat; Ford’s unwavering testimony that he recognized Petitioner’s face from previous encounters; the witness who saw a man wearing a white coat running through a backyard close to the murder scene around the time of the murder; witness testimony that Petitioner owned and wore a white coat like the one described by Ford and the other witness; evidence of Petitioner’s flight from South Carolina to Miami, Florida; and maybe most damaging, the reluctant testimony from a person Petitioner stayed with in Florida that Petitioner told her he had killed a man in South Carolina. (Appendix, pp. 131, 85-187, 216-223, 245-249, 258, 271-281). Given this evidence of guilt, and the other indicia of reliability Judge John found, there is no reasonable likelihood of a different trial result.

2. Judge Brown correctly denied post-conviction relief because trial counsel strategically used the absence of the gunshot residue test result by eliciting testimony that law enforcement did a gunshot residue test on Petitioner several hours after the murder, then arguing in closing that the jury could infer Petitioner's test was negative based on the State's failure to produce it, and Petitioner failed to prove there is a reasonable likelihood the trial result would have been different if trial counsel had presented the test document itself as evidence.

Petitioner asserts Judge Brown erred in denying relief because trial counsel failed to present evidence that Petitioner tested negative for gunshot residue after the murder. Petitioner premises this assertion on his self-serving claim the case against him was "thin" and if counsel had presented the gunshot residue test evidence, the trial result "may well have been different." (Petition, p. 20).

Trial counsel testified at the PCR hearing that he did not subpoena the SLED analysts who produced the gunshot residue test results because the analysts were on the State's witness list and he expected the State to call the analysts as part of the State's case. During cross-examination of a State's witness, trial counsel elicited testimony that law enforcement came to the witness' home the day of the murder and tested several men, including Petitioner, for gunshot residue. All of the men were let go, but law enforcement returned later and took one of the men (the witness' son) to the police department for questioning. (Appendix, pp. 227-230). The SLED analysts were not called as witnesses during the State's case, and the test results were not entered as evidence.

In closing argument, trial counsel capitalized on the testimony that a gunshot residue test was conducted on Petitioner's hands the day of the murder, the police let him go and the State did not produce a gunshot residue test as evidence. He argued:

"[y]ou can be darn sure that the gunshot test on Mr. Dukes was negative for two reasons, number one, the police let him leave, number two, you've got no gunshot residue report in this courtroom this week, and you can be darned sure if Mr. Dukes had tested positive for the presence of gunshot residue that there would be a report introduced in evidence in this courtroom. I think it's a very safe inference that he

was negative for gunshot residue. So before noon on the day of the shooting Mr. Dukes has been at least talked to by the police, apparently wasn't taken into custody, has been tested to see if he's fired a weapon recently, and . . . [h]e is free to go. Why does that matter? Well, aside from the gunshot residue it matters because he can go wherever he wants at that point."

(Appendix, pp. 356-357). In short, trial counsel used the absence of the gunshot residue evidence to Petitioner's advantage. While Petitioner correctly asserts the jury was instructed that argument by counsel is not evidence, the absence of a positive gunshot residue test was an undisputed fact the jury could consider.

Judge Brown found trial counsel's hearing testimony regarding his trial strategy and presentation of evidence was "very credible," trial counsel prepared the case to the best of his ability, and he "had a valid and clearly articulable trial strategy that was in line with the prevailing norms of professional conduct," and his findings are amply supported by the record. Other than again attempting to discount the overwhelming evidence of Petitioner's guilt, Petitioner merely makes the conclusory assertion that the trial results "may have been different" if trial counsel had presented the negative test results document as evidence. "May have been different" does not equate to the "reasonable likelihood" required to establish prejudice for PCR purposes. Accordingly, the Petition for Writ of Certiorari should also be denied as to this issue.

CONCLUSION


Petitioner has failed to prove trial counsel was deficient in any aspect of his representation of Petitioner during the criminal proceedings, or that there is a reasonable likelihood the trial results would have been different if the interview video was presented during the Biggers hearing (assuming Judge John did not see it) and the negative gunshot residue test had been admitted as evidence at trial. Given trial counsel's testimony regarding his trial strategy and presentation, and in light of the overwhelming evidence that Petitioner was guilty of murder, Judge Brown properly denied relief on the PCR application and this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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