

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Dorchester County

Honorable Paul M. Burch, Circuit Court Judge

---

EDWARD BONILLA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000765

---

PETITION FOR WRIT OF CERTIORARI

---

JORDAN WAYBURN  
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

**RECEIVED**

**Jan 28 2025**

S.C. SUPREME COURT

**INDEX**

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT.....6

Pretrial counsel was ineffective by disclosing the location of the victim’s body because the certain downsides were substantial, the likely benefits were nonexistent, and the prejudice was significant. ....6

(1) Deficiency .....6

(2) Prejudice .....13

CONCLUSION.....20

**ISSUE PRESENTED**

Was pretrial counsel ineffective by informing the Dorchester County Sheriff's Office where Petitioner buried the victim's body so MUSC could perform an autopsy, thereby effectively confessing for him with no realistic benefit because an autopsy would never show Petitioner killed Pegram on accident?

## STATEMENT

On May 8, 2015, Petitioner's counsel, Mark Leiendecker, told Captain Tony Phinney of the Dorchester County Sheriff's Office where his client buried the body of Ashley Pegram. App. 18:25-19:18.

After a trial before Judge Doyet Early, III, in August 2016, a jury convicted Edward Bonilla of murder, and the trial court sentenced him to life in prison. App. 1, 719:1-2, 726:14-16. He was represented at trial by appointed counsel Russell Hilton and Mandy Kimmons, while Donald Sorenson and Ryan Templeton prosecuted the case. App. 1. During deliberations the jury requested to know the relative sizes of Petitioner and Pegram. App. 728:11-12, (court's ex. 3). Robert Dudek represented him on appeal. App. 858. The court of appeals affirmed his convictions. *State v. Bonilla*, 429 S.C. 253, 286, 838 S.E.2d 1, 18 (Ct. App. 2019). Petitioner filed an application for post-conviction relief on July 6, 2021. App. 751. With Michael Lifsey as counsel, he amended his application twice and alleged pretrial and trial counsel were ineffective for several reasons. App. 783, 786. Judge Paul Burch held a hearing on his second amended application on February 5, 2024. App. 789. Bryan Hall represented the state. App. 789. The PCR court denied his claims by order dated May 3, 2024. App. 857.

On appeal, Petitioner's important PCR claim is that pretrial counsel—Leiendecker—was ineffective for "improperly disclosing the location of the victim's body without informed consent of [Petitioner]." App. 786. Pegram was killed after midnight early on April 4, 2015. On April 15, 2015, Petitioner was arrested for obstruction of justice. App. 27:14-18, 62:13-20. The Sheriff's Office identified Pegram's blood in Petitioner's work van on April 29, 2015. App. 489:7-15. Petitioner was charged with murder on May 5, 2015. App. 489:16-19. On May 8, 2015, pretrial counsel arranged for the Sheriff's Office to transport Petitioner to the Sheriff's

Office. App. 16:23-18:17, 29:21-30:21. The two spoke in a conference room in a trailer behind the office, and then pretrial counsel walked inside and showed Captain Phinney a map of where the body could be found. App. 17:24-19:21. At trial the parties stipulated to the events leading up to disclosure. App. 320:3-321:10, 744. The jury was told to take as true that Petitioner, through pretrial counsel, revealed the location of the buried body. App. 321:1-8.

Eventually Leiendecker realized that by being the source of Bonilla's confession to the location of the body he was a potential witness in the case, and he disqualified himself as Petitioner's attorney due to that conflict of interest. App. 25:17-22. Petitioner was then appointed new counsel who filed a "Motion to Quash Subpoena of Mark Leiendecker" based on Rule 1.6 of the Rules of Professional Conduct. App. 748. The trial court heard argument and evidence on the motion just prior to trial. App. 9:21-11:14. At that hearing both Leiendecker and Petitioner testified. App. 3. The trial court ultimately held Petitioner consented to the disclosure, his consent was adequately informed, and the disclosure did not violate Rule 1.6. App. 38:11-39:5. The court of appeals found there was evidence in the record to support that finding, and it stated PCR was the better avenue for addressing the disclosure. *Bonilla*, 429 S.C. at 273-74, 838 S.E.2d at 11.

Pretrial counsel testified at the PCR hearing that Petitioner told him his version of events at their second or third meeting: Petitioner was driving the victim home after a date, she was drinking and began acting strange or violent, and he ultimately restrained her and caused her death. App. 819:1-820:23. Petitioner told counsel that he then got his work van and drove up I-26 until he found a place he thought he could bury the body. App. 821:4-7. Counsel testified Petitioner "emphasize[d] that it was never intentional, that it was accidental, and that what

happened was he freaked out." App. 821:6-9. At trial Petitioner testified to this version of events. App. 565:1-566:17.

At the time of the disclosure pretrial counsel had preliminary discovery in the form of the victim's blood spattered in Petitioner's work van,<sup>1</sup> a gas station video showing her last seen with him, and some evidence he tried to mislead investigators and the victim's family. App. 201:3-202:25, 278:4-279:7, 408:17-409:6, 489:7-15, 818:7-17, 821:10-34:7. Pretrial counsel told Petitioner "that if the facts as he described them . . . could be forensically supported, they could greatly help his case, but if they weren't going to be, if that wasn't what happened, it could be devastating to his case." App. 825:1-4. He therefore recommended Petitioner disclose the location of the body so MUSC could perform an autopsy. App. 822:20-22. Pretrial counsel testified that he wanted MUSC for the autopsy rather than Newberry where Dorchester County typically had them performed. App. 801:3-10. Pretrial counsel believed MUSC would be more thorough in the investigation. App. 801:3-10, 823:23-824:2.

On the afternoon of the disclosure and the following morning, the Sheriff's Office searched the area Petitioner described, and with the help of a canine search team it discovered the body. App. 322:11-324:4, 360:13-361:10. The body was nude from the waist down, and there was electrical tape around the victim's neck and wrist. App. 326:1-3, 442:20-24, 446:21-25. The tape on the wrist was in two loops, presumably to go around both wrists. App. 444:4-9, 681:18-682:8. At trial a forensic pathologist testified the body had undergone "extensive decomposition changes across the entire body" which was "consistent" with the five weeks it had been buried. App. 441:9-19, 445:13-14.

---

<sup>1</sup> The blood was DNA matched to Pegram on April 29, 2015, prior to the disclosure. App. 489:7-15. Her blood was also found in Petitioner's mother's car, which is the vehicle he was driving that night. App. 278:4-279:7.

After the evidentiary hearing, the PCR court denied Petitioner's claim based on pretrial counsel's disclosure. App. 865. The court found "Leiendecker exercised reasonable professional judgment and articulated reasonable strategic grounds for the disclosure as he believed an autopsy of the victim's body could corroborate Applicant's accident defense, and thus, negate the murder charge." App. 864. It also concluded "Applicant failed to prove a reasonable probability the result of trial would have been different without the disclosure because there was other physical evidence linking applicant to the crime including victim's blood and DNA in Applicant's work van, Applicant's cellphone location data, and video camera footage of Applicant and the victim shortly before her disappearance and death." App. 865.

## ARGUMENT

**Pretrial counsel was ineffective by disclosing the location of the victim's body because the certain downsides were substantial, the likely benefits were nonexistent, and the prejudice was significant.**

"The Sixth Amendment guarantees every criminal defendant the reasonably effective assistance of counsel." *Stone v. State*, 419 S.C. 370, 379, 798 S.E.2d 561, 566 (2017) (citations omitted). A PCR applicant proves ineffectiveness in two prongs: "(1) counsel's representation fell below an objective standard of reasonableness and (2) but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different." *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Sellers v. State*, 362 S.C. 182, 188, 607 S.E.2d 82, 85 (2005)).

Whether a given set of facts meets a constitutional standard is a question of law this Court reviews without deference to the PCR court. *See Smalls v. State*, 422 S.C. 174, 180-81 & n.2, 810 S.E.2d 836, 839 & n.2 (2018); *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) (stating appellate courts review with deference findings of fact but de novo whether those facts legally constitute waiver of right to counsel). Therefore, accepting the PCR court's factual findings, whether counsel's conduct and stated strategy were deficient is reviewed de novo. For the same reasons, whether Petitioner was prejudiced by the conduct is reviewed without deference to the PCR court's ultimate conclusion.

### (1) Deficiency

When evaluating counsel's performance, courts give "wide latitude . . . in making tactical decisions." *Strickland*, 466 U.S. at 689. Thus, courts must make a "fair assessment" while "evaluat[ing] the conduct from counsel's perspective at the time." 466 U.S. at 689. But the critical question is still "simply reasonableness under prevailing professional norms." 466 U.S. at 688. "In making that determination, the court should keep in mind that counsel's function . . .

is to make the adversarial testing process work in the particular case." 466 U.S. at 690. That is the overarching purpose of the right: "to ensure that criminal defendants receive a fair trial." *Strickland*, 466 U.S. at 689.

It is well established that not every "strategic" decision of counsel is reasonable. *Stone v. State*, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017) ("[C]ounsel's decision to employ a certain strategy will be deemed unreasonable under the Sixth Amendment if the reasons given for the strategy are not sound."); see *Ard v. Catoe*, 372 S.C. 318, 334, 642 S.E.2d 590, 598 (2007) ("[C]ounsel's decision . . . was not an objectively reasonable strategy."). Rather, "Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness." *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (emphasis original) (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992)); see also *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) ("[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." (emphasis original) (quoting *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008))). Thus, counsel's performance is deficient where his strategy is objectively unreasonable or his purposes invalid.

The question here is whether it was a valid strategy for pretrial counsel to tell the Sheriff's Office where Petitioner buried Pegram's body. Initially, that decision is dubious on its face. Moreover, it was not valid because disclosure effectively amounted to a confession to killing Pegram, counsel's hoped-for benefit was realistically impossible, and it was always going to lead to strong evidence against Petitioner. First, disclosing the location inevitably leads to the conclusion that Petitioner knew where the body was buried, which is functionally identical to a confession he killed Pegram. Second, counsel's stated purpose for disclosure was to obtain an

autopsy, but an autopsy could not prove Petitioner's lack of intent. Third, discovery of the body was always going to produce some evidence valuable to the state. Additionally, by personally disclosing the information, pretrial counsel made himself a witness against his client. These results were foreseeable based on information known to pretrial counsel at the time, and counsel was deficient because any reasonable attorney would have recognized the obvious risks outweigh the potential benefits.

For clarity, the question raised here—unlike on direct appeal—does not primarily concern Petitioner's "informed consent" but rather counsel's tactical decision. Whether Petitioner consented to that decision is largely irrelevant because this is a question of legal strategy. *Cf. Fareta v. California*, 422 U.S. 806, 820 (1975) ("[W]hen a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy in many areas."). His consent is unimportant because "[t]he onus is not on the client to perceive the legal risks himself and then to dissuade his attorney from a particular course of action." *McClure v. Thompson*, 323 F.3d 1233, 1244 (9th Cir. 2003). One of a lawyer's primary purposes is to advise. Where that advice is objectively unreasonable, whether the client consented to the bad strategy does not matter.

(a) *It was unreasonable for pretrial counsel to believe the benefits of an autopsy would outweigh its inherent risks.*

Here, it was simply not reasonable to believe it was worth gambling on an autopsy bolstering Petitioner's story, particularly in light of other evidence available at the time. When combined with the inherent and substantial risk the body would come back other than as Petitioner indicated—for example, with evidence suggesting a sexual assault and other violence—it was objectively unreasonable for counsel to disclose the location of the body.

The most important reason pretrial counsel's decision was unreasonable is that even in the best-case scenario, the evidence sought was not likely to help at trial. At the time of the disclosure, Petitioner was already charged with murder. App. 25:23-26:2. The Sheriff's Office had him on video as potentially the last person seen with the victim, and her blood was spattered in his car and work van. App. 180:21-24, 201:3-20, 278:4-279:7, 489:7-15. Petitioner's consistent story has been that he restrained the victim and then she stopped moving, and the evidence against him after that point in time came from his poorly thought-out cover-up. App. 564:15-566:3, App. 820:15-821:9. Counsel testified at PCR he believed Petitioner's version of events, and he hoped an autopsy would prove it. App. 822:8-22, 828:12-15. The problem with counsel's reasoning is that an autopsy cannot show Petitioner did not intend to kill Pegram, but disclosure was guaranteed to lead the state to strong evidence against Petitioner.

An autopsy simply could not have proven a lack of intent. Autopsies can show only cause of death—as it did here, "homicidal violence," App. 456:5-6—and that evidence was always going to be more helpful to the state than Petitioner. Counsel should have known this. Petitioner told him he violently—albeit unintentionally—killed Pegram. Even if everything occurred and appeared exactly as Petitioner stated, the solicitor was always going to argue the killing was intentional, and an autopsy would always support that claim. Particularly when an autopsy is combined with what law enforcement officers and pretrial counsel knew at the time, the case against Petitioner after disclosure was always going to look incredibly bad once the body was discovered. While an autopsy could prove better or worse for Petitioner, in no event would it exonerate him. For example, at the PCR hearing pretrial counsel testified his reasoning at the time was "that the best way [the accident story] could be borne out or proven is if there was physical evidence from her body to demonstrate that . . . she hadn't been the victim of any

violent actions that would have caused or led to, you know, swung blunt instruments and blood spatter." App. 822:8-15. Counsel was correct an autopsy that revealed no significant injuries would have been less damaging to Petitioner's case than one that did reveal such injuries. Such evidence could have theoretically lent a small degree of credibility to Petitioner. But an autopsy would always show Petitioner, in some way, violently killed Pegram. That result was unavoidable, and reasonable counsel would have known such evidence would be more detrimental than beneficial.

Even in a best-case scenario where the body is recovered precisely as Petitioner described, the evidence would show he squeezed the victim to death. The only evidence, then, to support Petitioner's story would be his testimony that he did so unintentionally. That places Petitioner in exactly the same position as he would have been without disclosure, and it risked providing the state with evidence to contradict Petitioner's version of events, which is exactly what happened. Disclosure introduced the unnecessary and substantial risk that Petitioner's memory or description of the state of the body might prove inaccurate. In that event—as actually occurred—the state would be gifted extremely strong evidence to contradict Petitioner's assertions. This was easily foreseeable at the time of disclosure.

In addition, counsel knew it had been approximately five weeks since the victim was buried. Over that time, especially in the lowcountry in springtime, a body buried in the woods is going to undergo significant decomposition. Anyone that seriously considered what might be found would reach that conclusion, and such a prediction was in fact borne out as the pathologist testified. Serious decomposition was always and only going to make this look worse for

Petitioner,<sup>2</sup> and pretrial counsel should have known that. Further, as the pathologist testified: "the decomposition in this case kind of hinders the ability to diagnose certain injuries." App. 449:24-25. Reasonable counsel would have considered that likelihood, even further decreasing the chance of uncovering favorable evidence.

At the PCR hearing pretrial counsel testified he particularly wanted MUSC to perform an autopsy over Newberry. That was not an important benefit for two reasons. First, as explained, the likelihood of finding beneficial evidence that outweighed the harm was almost zero. Second, in the event the body was discovered absent disclosure—something counsel was without reason to expect—counsel could request MUSC perform its own autopsy at that time. Counsel knew this was an option because he previously obtained a second autopsy and opinion in another case. App. 36:3-14. Thus, there was no benefit to disclosure, so "the reasons counsel gave for employing the strategy were not sound." *Stone*, 419 S.C. at 384, 798 S.E.2d at 569.

Considering all of the circumstances together and "evaluat[ing] the conduct from counsel's perspective at the time," *Strickland*, 466 U.S. at 689, the potential benefit of counsel's disclosure was virtually nonexistent while the likely harm was always going to be substantial. Disclosing the location of the body, in the context at the time, was an admission to killing her. Disclosure was always going to produce some substantial physical evidence against Petitioner, and it carried a real risk of producing devastating evidence like that actually found. This is not a case where counsel divulges the location of the body to eliminate the death penalty, mitigate the charges against him, or obtain some other tangible benefit. Rather, pretrial counsel's purpose for

---

<sup>2</sup> *Cf. State v. Jones*, 440 S.C. 214, 262, 891 S.E.2d 347, 372 (2023), *cert. denied*, 144 S. Ct. 1012, 218 L. Ed. 2d 176 (2024) (holding it was error under Rule 403, SCRE, to admit photos of murdered "children's bodies in the advanced stages of decomposition occurring in the three days between the time Jones dumped the bodies to the time law enforcement discovered them").

doing so—to obtain an autopsy—does not withstand scrutiny because an autopsy could not show Petitioner squeezed the victim to death unintentionally. Disclosure was not a reasonable strategic decision by counsel thinking through and weighing the potential risks and realistic benefits. It was magical thinking, hoping beyond reason that an MUSC autopsy would somehow do something it never could.

(b) *Counsel was not fulfilling the vigorous advocacy and loyalty responsibilities required by the Sixth Amendment.*

It is a criminal defense lawyer's responsibility to act as an advocate who meets objectively reasonable standards. Those standards are necessary "to justify the law's presumption that counsel will fulfill the role in the adversary process that the [Sixth] Amendment envisions." *Strickland*, 466 U.S. at 688. Disclosing the location of the body in exchange for *nothing* cannot be classified as "vigorous advocacy of the defendant's cause." *Strickland*, 466 U.S. at 689. Counsel could have negotiated for a lighter sentence or lesser charges, and perhaps Petitioner would have plead guilty to involuntary manslaughter in exchange for the information. But by effectively confessing for Petitioner and without benefit, pretrial counsel was not functioning as the advocate and adversary intended by the Sixth Amendment. *See Strickland*, 466 U.S. at 690 ("[C]ounsel's function . . . is to make the adversarial testing process work in the particular case.").

In a way, counsel served as the best possible informant for law enforcement. He did everything the police would like to do: he spoke with the defendant multiple times and pressured him into revealing the location of the body (thereby effectively also confessing to killing her) for no benefit. *Cf. Farett*a, 422 U.S. at 820 (stating counsel "shall be an aid to a willing defendant—not an organ of the State"). As he testified at the PCR hearing, this reality is why pretrial counsel ultimately had to withdraw, because "possibly [he] had done things that would make [him] a

witness" for the state. App. 830:2-3. That was a failure and objectively unreasonable. See 70 Corpus Juris, *Witnesses* § 532, at 399 (1935) (explaining the purpose of attorney-client confidentiality is "for the protection and benefit of the client . . . so that the client's disclosures may not be used against him . . ."); see also *Strickland*, 466 U.S. at 692 ("[T]he duty of loyalty [is] perhaps the most basic of counsel's duties."). Altogether, counsel virtually abandoned his client by turning into a de facto police informant, thereby requiring him to disqualify himself from representing Petitioner. That is not effective representation.

## (2) Prejudice

To prove prejudice, the PCR applicant must show "there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. at 687). "[T]he question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (quoting *Strickland v. Washington*, 466 U.S. at 695). The applicant "need not show that counsel's deficient conduct more likely than not altered the outcome in the case." *Strickland*, 466 U.S. at 693). In evaluating prejudice, it is necessary to consider both "the specific impact counsel's error had on the outcome of the trial" and "the strength of the State's case in light of all the evidence presented to the jury." *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843.

Before addressing the prejudice claim directly, it is necessary to clarify the question at issue. On direct appeal the Court of Appeals stated that suppression and exclusion are not a proper remedy for a violation of Rule 1.6 and so could not apply to the disclosure itself or evidence found with the body. *State v. Bonilla*, 429 S.C. 253, 273, 838 S.E.2d 1, 11 (Ct. App. 2019). In contrast, for the ineffective assistance of counsel claim presented here, the sole

question on prejudice is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Because what matters is the effect of the error on the proceeding, whether suppression was the proper legal remedy is not the point.<sup>3</sup> In the context of this case, however, the question still requires an analysis akin to the "fruit of the poisonous tree" doctrine and the court must determine the likelihood this evidence would have been discovered and admitted but for pretrial counsel's unreasonable strategy. To that end, as will be explained *infra*, there is no reason to believe Pegram's body would have been discovered absent disclosure. Thus, that evidence would not have been produced at trial. Further, it is indisputable that the stipulation which amounted to a confession would not have been made without the disclosure. Lastly, Petitioner's testimony, had he chosen to testify at all, would have been materially different because the solicitor would not have had reason to ask certain questions—questions like why her wrists and neck were bound with tape, App. 621:20-622:25. If the Court agrees that without the disclosure there is a reasonable probability Petitioner would have received a different verdict or sentence, then the analysis should end.

---

<sup>3</sup> Although not necessary to decide at this time, Petitioner contends that if he is re-tried then suppression and exclusion are the only possible remedies. At trial and on direct appeal, the courts considered exclusion as a result of Rule 1.6. *State v. Bonilla*, 429 S.C. 253, 273, 838 S.E.2d 1, 11 (Ct. App. 2019). The issue on remand would instead concern evidence discovered due to Petitioner's unconstitutional deprivation of his Sixth Amendment right to the effective assistance of counsel. The remedy in such a case must be suppression because to try him again while still allowing the state to use the evidence discovered from the disclosure would likely result in another conviction *because of* the ineffective assistance of pretrial counsel at issue here. Petitioner would then again have a claim for a violation of his right to the effective assistance of counsel because pretrial counsel's deficiency prejudiced his re-trial. Such a fruitless endeavor cannot be the result, as he must have a remedy for this wrong. *Cf. Marbury v. Madison*, 5 U.S. 137, 163 (1803) ("The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.").

With that framing in mind, the PCR court erred in concluding Petitioner did not demonstrate prejudice, particularly because it failed to appreciate that his defense at trial focused on his accident testimony and lack of intent.

(a) *The evidence available because of disclosure was significant, and there is a reasonable probability it affected the result of the proceeding.*

Here, the analysis must start by considering the evidence presented as a result of pretrial counsel's disclosure. Importantly, there is no suggestion in the record that the body would have been discovered absent pretrial counsel's disclosure. It was buried many miles away and one or two hundred yards off a small road. App. 322:11-24, 337:9-6; *see* State's Ex. 100. When investigators first searched the area identified by pretrial counsel, they could not find it; only trained "cadaver dogs" could do so. App. 322:11-324:1. There is no reason to believe the body and subsequent evidence would have been found without the aid of pretrial counsel.

The evidence discovered from the disclosure included: (1) the cause of death was "homicidal violence," including multiple injuries to the head and fractures in the thyroid cartilage indicating "manual strangulation," App. 451:2-7, 456:4-18; (2) the body was found with electrical tape wrapped around her neck and wrist; (3) the body was nude from the waist down, and her shirt and bra were displaced; (4) the tissue and internal organs around her buttocks and pelvic area were missing, indicating injury to the area, App. 448:9-19; and (5) a muscle relaxer was found in the body, App. 453:10-14. These are substantial facts directly tied to the disclosure, and the solicitor thoroughly emphasized them in his opening and closing arguments. In opening he argued, "When her body is finally found, she [is] naked from the waist down, her shirt and bra are pulled up near her throat; there's electrical tape about her wrists and electrical tape wrapped around her throat." App. 145:4-7. He repeated that evidence in closing. App. 702:3-7.

Particularly, the state emphasized the testimony of Dr. Batalis, the forensic pathologist, and the electrical tape. First, in closing the state pointed to Batalis's testimony about the injuries to the body. App. 676:19-25. Batalis testified he found injuries to the thyroid cartilage and scalp, and that the missing tissue around the pelvic area was "suspicious." App. 448:9-16, 450:13-452:6. The solicitor used his testimony to specifically challenge Petitioner's version of events, saying "that testimony is inconsistent with what he says happened." App. 677:4-5. The solicitor also emphasized Batalis's description of her clothing, which he again used to discredit Petitioner's version of events, and to corroborate the blood spatter analysis by reporting multiple injuries to the head. App. 677:14-679:19, 684:22-686:14. Second, the state repeatedly emphasized the electrical tape as a evidence of Petitioner's intent. App. 679:20-682:25, 702:3-7. Again the state compared his version of events to the body, arguing, "he's had, what? A year and a half to come up with something. And still haven't [sic] been able to come up with a plausible explanation for how this tape got around her wrists . . . that makes any sense and in anyway fits into that story that he told you yesterday." App. 682:15-20. These direct attacks on Petitioner were possible only because of pretrial counsel's deficient performance by informing on his client.

Disclosure also provided the state with evidence it used to suggest a potential motive: to rape her. It pointed to a bottle of lube in his work van, and then argued the muscle relaxer in her system proved "she's been drugged."<sup>4</sup> App. 694:17-695:15. The solicitor argued that while driving her home when they pulled over, "that's where the assault happened," and then "something got out of hand." App. 695:22-696:2. He argued that "explains why her bra is ripped" and "her shirt is pulled up around her neck area," evidence available solely due to the

---

<sup>4</sup> At trial, Batalis agreed there was "no way to tell exactly when" Pegram took the muscle relaxer and testified "it was within a couple of days before she died." App. 462:8-15.

disclosure. App. 696:3-6. While motive is not an element of the crime, this was the only possible reason ever suggested by the state, and particularly where Petitioner's intent was the sole question at issue, this evidence and argument were extremely important. *See State v. Sweat*, 362 S.C. 117, 124, 606 S.E.2d 508, 512 (Ct. App. 2004) (citation omitted) ("Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence . . . of the intent to commit the crime when intent or state of mind is in issue.").

The final significant detriment to Petitioner's case was the necessary stipulation to pretrial counsel's disclosure. The solicitor decreed as indisputable fact:

On May the 8th of 2015, attorney Mark Leiendecker contacted Captain Tony Phinney and informed Captain Phinney that his client may have information about the location of the remains of Ashley Pegram. . . . After Mr. Leiendecker and Mr. Bonilla met for approximately 20 minutes, Mr. Leiendecker met with Captain Phinney with an electronic notebook displaying a map. Mr. Leiendecker gave a general location of where they would discover the body of Ashley Pegram . . . .

App. 320:22-321:8. The jury was told by the court, "these facts are true; *no one can contest them. And you're to take them as true evidence in the case.*" App. 320:6-11 (emphasis added). In context that disclosure was a confession, which is "probably the most probative and damaging evidence that can be admitted against [Petitioner]." *Arizona v. Fulminante*, 499 U.S. 279, 292 (1991) (citation omitted). The stipulation thus amounted to a directed verdict that Petitioner killed Pegram, and it meant Petitioner was almost certainly going to be found guilty.

In conjunction with the condition of the body and other evidence found, the resulting weight of evidence against Petitioner due to the disclosure establishes "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843 (quoting *Strickland v. Washington*, 466 U.S. at 695).

Without the disclosure, the state had no body and no motive—that is a hard case to prove beyond a reasonable doubt. Specifically, the state would have had a much more difficult time contradicting Petitioner's assertion that, although he did kill the victim, he did so only unintentionally.

(b) *Disclosure also prejudiced Petitioner in sentencing.*

Even if the state establishes overwhelming evidence of guilt, that "does not automatically preclude a finding of prejudice" where counsel's deficiency could have impacted sentencing. *Smalls*, 422 S.C. at 189, 810 S.E.2d at 844 (citing *Simmons v. State*, 331 S.C. 333, 340, 503 S.E.2d 164, 167 (1998)). Except in capital cases, the typical allegation of ineffective assistance claims counsel's conduct prejudiced the jury's determination of guilt. Ordinarily, such errors should be presumed to have no improper influence on the trial court in sentencing because it is permitted to consider a wide range of factors and exercise discretion as appropriate within statutory limits. The trial court will hear the result of most errors, and on PCR it is presumed that has no improper influence on sentencing. However, this case is different because the attorney-client privilege is and should be so jealously protected. *See Tobacoville USA, Inc. v. McMaster*, 387 S.C. 287, 293, 692 S.E.2d 526, 529 (2010) ("This privilege is based upon a wise policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to this professional advisor . . . ." (quoting *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992))). Thus, even the court cannot know the substance of privileged communications except where strictly necessary to determine if the communication is in fact privileged. *State v. Doster*, 276 S.C. 647, 652, 284 S.E.2d 218, 220 (1981) (citations omitted) ("The court must determine the question of privilege without first requiring disclosure of the substance of the communication."). Here, but-for pretrial counsel's unreasonable disclosure, the court never would have known the evidence uncovered

with the body. Therefore, on the particular facts of this case, it is proper to evaluate the impact of counsel's error on the trial court and Petitioner's sentence.

As discussed, the evidence disclosed and discovered was significant. There is a reasonable probability that without it the trial court would have imposed a lesser sentence because the court revealed its reliance on that evidence when sentencing Petitioner. Just prior to announcing its sentence the court stated: "It was a brutal way for this young lady to die and even more brutal for the way she was treated after her death: bound by the neck and arms, stripped of her clothes, . . . dragged through the woods and buried in a shallow grave in such a manner that she became available for whatever wild animals were in the area." App. 725:21-726:2. Cf. *State v. Jones*, 440 S.C. 214, 262-64, 891 S.E.2d 347, 372-73 (2023) (holding photographs of murdered children's bodies left in the woods "in the advanced stages of decomposition" where "a number of their limbs had been eaten by animals" presented such risk of unfair prejudice the trial court erred by admitting them over a Rule 403, SCRE objection). The only reason the court knew of that evidence was because of pretrial counsel's unreasonable disclosure, and it clearly influenced the court's exercise of its discretion in sentencing. The court stated to Petitioner: "I tried many murder cases, and I've sentenced many people to murder. I've only sentenced two other people to the sentence I'm giving you." App. 726:12-14. It then sentenced Petitioner to life in prison. App. 726:14-16. Given the court's express consideration of the disclosure evidence and the fact that short of the death penalty, Petitioner could not have received a harsher sentence, the outcome of his proceeding was clearly prejudiced by the disclosure.

**CONCLUSION**

Petitioner respectfully requests the Court grant his petition for a writ of certiorari to review the PCR court's decision.



Jordan Wayburn  
Appellate Defender

ATTORNEY FOR PETITIONER

This 28<sup>th</sup> day of January, 2025.