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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO DORCHESTER COUNTY
Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2024-000765

EDWARD BONILLA,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

PETITIONER'S STATEMENT OF QUESTION

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?

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS

- I. Whether the PCR court correctly found Petitioner failed to prove Counsel was deficient for disclosing the location of Victim's body to police, with Petitioner's informed consent, where Counsel articulated a reasonable and valid strategy, believing physical evidence from an autopsy of Victim's body could corroborate Petitioner's story that that the killing was accidental and thus, negate the murder charge.
- II. Whether the PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel's disclosure of the location of Victim's body because there was sufficient of Petitioner's guilt for murder from other evidence including Victim's blood splatter in Petitioner's work van, Victim was last seen with Petitioner before her disappearance, and Petitioner made efforts to mislead police and Victim's family after her disappearance.

STATEMENT OF THE CASE

In December 2015, the Dorchester County Grand Jury indicted Edward Bonilla (“Petitioner”) for murder (2015-GS-18-0606). On August 8-11, 2016, Petitioner proceeded to a jury trial before the Honorable Doyet A. Early, III. Deputy Solicitor Donald Sorenson and Assistant Solicitor Ryan Templeton prosecuted the case. Mark Leiendecker, Esq., (referred to as “Counsel” for purposes of this Return) initially represented Petitioner but was later relieved when a conflict arose. Russell Hilton, Esq., (“trial counsel”) and Mandy Kimmons, Esq., represented Petitioner at trial. The jury convicted Petitioner as indicted, and Judge Early sentenced Petitioner to life without parole.

On August 22, 2016, a notice of appeal was filed. On appeal, Petitioner was represented by Chief Appellate Defender Robert Dudek. Following briefing and oral argument, the Court of Appeals affirmed Petitioner’s conviction and sentence. *State v. Bonilla*, 429 S.C. 253, 838 S.E.2d 1 (Ct. App. 2019), *cert. denied*.

On July 6, 2021, Petitioner filed an application for post-conviction relief (“PCR”), alleging ineffective assistance of counsel. On October 15, 2021, the State (“Respondent”) filed its Return. Petitioner amended his application and proceeded on the allegations contained in his second amendment. On February 5, 2024, an evidentiary hearing was convened before the Honorable Paul M. Burch. Assistant Attorney General Bryan T. Hall represented Respondent. Michael H. Lifsey, Esq., represented Petitioner. On May 3, 2024, Judge Burch denied Petitioner’s PCR, finding Petitioner failed to meet his burden of proving Counsel was ineffective was disclosing the location of the victim’s body to law enforcement and failed to prove trial counsel was ineffective for other issues. This petition followed.

STATEMENT OF THE FACTS

On the night of April 3rd, Victim went on a date with Petitioner, whom she met online. (App. 152; 168). After midnight, in the early morning of April 4, 2015, Ashley Pegram (“Victim”) disappeared. Brandy Chance, Victim’s sister, testified that on April 4th, nobody heard from Victim. (App. 155). Chance attempted to contact Petitioner about her sister’s whereabouts, and Petitioner told her that he left Victim in front of a mobile home park. (App. 167). Chance filed a missing person’s report. (App. 168).

Robert Cauble, Petitioner’s boss, testified that on the morning of April 4th, Petitioner sent a text stating he was not coming into work. (App. 212-13). Cauble testified that Petitioner usually used a work van. (App. 209-10). On April 15th, Investigator Jeff Scott testified that he went to Petitioner’s job to look at a vehicle, a Ford work van that was typically used by Petitioner. (App. 259; 224-25; 218). On that day, Petitioner was arrested for obstruction of justice when officers discovered Petitioner had a job after he previously told officers that he did not. (App. 223; 487-88).

Pursuant to a consensual search, police found numerous blood splatter stains and items with blood stains in the work van. (App. 225). The stains tested presumptively positive for blood, and subsequent SLED tests of the blood swabs matched Victim’s DNA. (App. 225; 263-70; 423-26). Bradley Mullis, an expert witness, opined that the blood splatter patterns in the work van were consistent with a person swinging either a weapon or fist in a repeated motion. (App. 409-11). Police also found Victim’s blood in the trunk of a Hyundai Sonata, driven by Petitioner on the night of her disappearance. (App. 426).

Investigator Scott testified that pursuant to a disclosure by Petitioner’s Counsel, with Petitioner’s consent, law enforcement searched an area in Harleyville on May 9th and found

Victim's body. (App. 321-324). Scott testified that Victim's body was found covered in dirt and decomposing. (App. 321-26). Scott testified that Victim had on a bra but was nude from the waist down. (App. 324-26). Detective Adam Smith testified that Petitioner's cellphone location data showed that on the morning of April 4th, he was in Harleyville in an area correlated with where Victim's body was found. (App. 384-85).

Nicholas Batalis, pathologist, testified that the condition of Victim's body was consistent with having been buried five (5) weeks prior. (App. 441). Batalis testified that Victim had black electrical tap around her wrist. (App. 442). Batalis opined that the cause of death was suspicions of strangulation and blunt force trauma from homicidal violence. (App. 456-57).

At trial, Petitioner testified that he was taking Victim home and stopped at a gas station (captured on video) (App. 558). Victim got back into the car with Petitioner and along the way, Victim got out of the car on the side of the road to use the bathroom. (App. 562-63). Petitioner testified that he backed the car up and hit Victim with his car; Petitioner maintained that it was an accident. (App. 563-64). Petitioner testified that Victim became upset, and Petitioner restrained her to calm her down. (App. 563-64). Petitioner testified that he held Victim until she stopped fighting him and fell to the ground. (App. 565). Petitioner testified that Victim died in his arms, and he placed her in the trunk of the Hyundai car and placed her body on the side of the road before going home. (App. 565-67). Petitioner testified that he got his Ford work van and placed Victim's body in the van; she was bleeding on her head. (App. 571). Petitioner testified that he placed a bag around Victim's head and taped it. (App. 571). Petitioner testified that he dragged Victim's body, dug a grave, and placed her body in the grave (App. 577-78). Petitioner testified that he texted Victim on the Kik Messaging App to cover his tracks. (App. 573).

STANDARD OF REVIEW

Appellate courts give great deference to the PCR court's factual findings and will uphold them if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts will review the PCR court's conclusions of law *de novo* and will reverse if the PCR court's decisions are controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms (i.e. deficient performance), and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To establish prejudice, the applicant must prove “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 (quoting *Strickland*, 466 U.S. at 694).

Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. When evaluating a claim for ineffective assistance of counsel, the court is to examine counsel's conduct by the law available at the time of trial and “every effort be made to eliminate the distorting effects of hindsight.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Strickland*, 466 U.S. at 689).

ARGUMENT

- I. **The PCR court correctly found Petitioner failed to prove Counsel was deficient for disclosing the location of Victim’s body to police, with Petitioner’s informed consent, where Counsel articulated a reasonable and valid strategy, believing physical evidence from an autopsy of Victim’s body could corroborate Petitioner’s story that that the killing was accidental and thus, negate the murder charge.**

Counsel was not deficient because he articulated a valid and reasonable strategy for disclosing the location of Victim’s body, believing physical evidence from an autopsy could establish an accident defense and negate the murder charge. Under *Strickland*, judicial scrutiny of counsel’s performance “*must be highly deferential*” to the reasonable judgment and strategic decisions made by counsel. *Strickland*, 466 U.S. at 689 (emphasis added). “When trial counsel articulates a valid reason for employing certain trial strategy, counsel will not be deemed ineffective.” *McKnight v. State*, 378 S.C. 33, 43, 661 S.E.2d 354, 359 (2008). The validity of counsel’s trial strategy is viewed under an objective standard of reasonableness. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008)). The court is to evaluate counsel’s decisions at the time they were made and “every effort be made to eliminate the distorting effects of hindsight.” *Id.* at 456, 710 S.E.2d at 64 (quoting *Strickland*, 466 U.S. at 689); *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (“Courts must be wary of second-guessing counsel’s trial tactics....”).

At the PCR hearing, Counsel testified that in their second or third meeting, Petitioner gave his version of the events: Petitioner backed up and struck Victim in the head with the bumper of his car while she was using the bathroom on the side of the road. (App. 820). Petitioner told Counsel that Victim was acting weird [after Petitioner struck her] and Petitioner sought to restrain Victim by grabbing her, and Victim died. (App. 820). Counsel testified that Petitioner “emphasized” that the killing was never intentional but was accidental. (App. 821). Counsel testified that he found Petitioner to be believable, and Petitioner was soft-spoken, seemed very

intelligent, and was logical in discussions. (App. 828). Counsel testified that the problem with Petitioner's story was that he misled investigators and Victim's family about her whereabouts but informed Petitioner that the best way to prove the killing was not intentional or malicious is physical evidence to demonstrate that Victim had been struck when Petitioner backed up. (App. 821-22).

Counsel testified that he discussed the defense of accident with Petitioner, and Petitioner's trial defense would be that the killing was accidental and that Petitioner's panic led him to do another crime: desecration of a body but not murder. (App. 822). Counsel testified that desecration of a body carried less time than the murder charge and [explained to Petitioner] that if they could find physical proof that was advantageous, the proof would come from Victim's body. (App. 822).

Counsel testified that he explained to Petitioner the risks associated with disclosing the location of Victim's body as follows:

[T]he upside was if there was physical evidence to support his story, [Petitioner] could avoid the murder charge, maybe not even be tried on a murder charge, but...if what he told me was false...that disclosure of the body could also be a huge evidentiary and forensic find for the authorities to support their theory that he committed the murder.

(App. 823:6-12).

Counsel testified that he and Petitioner discussed it three (3) times. (App. 823). Counsel testified that he informed Petitioner that it had been weeks since the body went missing, and if Petitioner was going to help himself, "we need to, you know, still be able to" [conduct an autopsy]. (App. 823:17-20). Counsel testified that Petitioner said, "everything will be just as I described it." (App. 823:19-20). Counsel testified that he explained to Petitioner that he would give the information about the whereabouts of Victim's body to law enforcement. (App. 830). Counsel testified that Petitioner gave his informed consent to the disclosure. (App. 831).

Counsel testified that upon discovery, Victim's body did not corroborate Petitioner's story, and there were problems with what was found: Victim was nude and had tape wrapped around her wrists. (App. 825). Counsel testified that regardless of the body being found, Petitioner had been charged with murder, and there were sufficient facts that would allow the jury to conclude that he was guilty of the murder of victim. (App. 826:11-16; App. 822:1-7). Counsel testified that after Victim's body did not corroborate Petitioner's story, Petitioner became upset and complained about Counsel disclosing the location once the discovery was out and the results were not very good for Petitioner. (App. 825:22-826:1; 829:22-830:6).

- A. Counsel's strategy was to disclose the location of Victim's body so an autopsy could be performed was both valid and reasonable under the circumstances because Counsel reasonably relied on Petitioner's assurance to him that the killing was accidental and Victim's body would confirm, and Counsel believed an autopsy would negate the murder charge based on his experience and previous successes with similarly situated clients.**

Under the circumstances and information available to Counsel at the time, Counsel's strategy for disclosing the location of Victim's body was both valid and reasonable. Counsel testified that he has been practicing criminal law for thirty-three (33) or thirty-one (31) years and is the circuit public defender for the First Circuit. (App. 817). *Counsel is an experienced criminal defense attorney.*

Counsel testified that he represented Petitioner for a short period of time – weeks. (App. 818). Counsel testified that during that time, he had “some” discovery from the State including the blood splatter evidence and video surveillance from the gas station but did not have the final forensic reports. (App. 818). Counsel testified that he met with Petitioner four (4) to five (5) times, and Petitioner did not tell Counsel his version of events right away but did so in the second (2nd) or third (3rd) meeting. (App. 818:22-819:8). Counsel testified that Petitioner “emphasized” that the killing was never intentional but was accidental. (App. 821). Counsel testified that he found

Petitioner to be believable because Petitioner was soft-spoken, seemed intelligent, and seemed logical during discussions. (App. 828).

Based on Counsel's perceptions of Petitioner's believability and emphasis that the killing was accidental, Counsel developed a strategy to use physical evidence to corroborate Petitioner's story and establish an accident defense to negate the murder charge. Counsel testified that in his experience, he had a similar murder case in which a previous client was charged with murder through neglect of a child, and Counsel was able to get the murder charge dismissed by getting a different autopsy report of the victim's body. (App. 824). Counsel testified that he had a separate client whose boyfriend died, and the client freaked out and tried to dispose of the body; however, the client was able to avoid murder charges and pled to desecration of human remains. (App. 824). Counsel testified that he was thinking of those experiences and, potentially, a similar result for Petitioner. (App. 824).

Counsel's strategy was based on his decades of experience in criminal defense and prior successes with similarly situated clients. In developing a strategy, Counsel reasonably relied on Petitioner's assurance that the killing was unintentional, and Victim's body would corroborate his story by stating to Counsel "everything would be just as I described it." (App. 823:19-20). Petitioner knew that Victim's body would not corroborate his story but still chose to be dishonest with and mislead Counsel.

Petitioner's own dishonesty and misrepresentations to Counsel about the facts of his case cannot be used as a basis for finding Counsel deficient where Counsel found Petitioner believable and reasonably relied on Petitioner's word under circumstances in which Counsel had limited information and limited time. *Cf. Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594 596 (1992) (holding counsel was not deficient for failing to request a mental evaluation where he "reasonably

relied on his own perceptions” about the applicant’s mental health). An attorney-client relationship, especially in a criminal defense context, requires a level of trust between the attorney and the client. Petitioner altered that relationship of trust by misleading his attorney, then becoming upset with Counsel after the fact. Counsel testified that Petitioner consented to the disclosure and [only] became upset and complained about Counsel after the discovery revealed information that did not corroborate Petitioner’s story. (App. 829). For this Court to find Counsel was ineffective for making a reasonable strategic decision based on information he received from Petitioner in consultation would essentially be rewarding Petitioner for intentionally misleading Counsel to Petitioner’s own detriment.

Petitioner argues that it was unreasonable for Counsel to disclose the location of Victim’s body, knowing that that five (5) weeks had passed since Victim was buried, and the condition of the body would not be beneficial to Petitioner. However, Counsel mentioned this fact to Petitioner during their discussions about the disclosure. Counsel testified that he told Petitioner that weeks had gone by and if Petitioner was going to help himself, they needed to act. (App. 823). Any delays or loss of evidence from the body’s decomposition are attributable to Petitioner since he waited until the second (2nd) or third (3rd) meeting to tell Counsel his version of the facts, and thereafter, Petitioner waited longer to give Counsel his informed consent. (App. 819:3-8; 823:13-19).

The record supports a finding that Counsel thought critically about the situation and considered several factors when consulting with Petitioner about decision to disclose including the murder charge, the intent element, the importance of time, and condition of Victim’s body. The facts support a finding that Counsel made a careful and thoughtful decision after considering and reviewing Petitioner’s case with him. *Strickland* requires that this Court defer to Counsel’s

reasonable judgment, experience, perceptions, and beliefs under the circumstances at the time the decision was made.

Even if this Court has reason to think that Counsel's decision was far from exemplary, this Court still may not grant relief since Petitioner failed to prove that the approach taken by Counsel, attempting to negate the murder charge with an accident defense corroborated by physical evidence, was one that no competent lawyer in Counsel's position would have taken under the circumstances. *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (“[E]ven if there is reason to think that counsel’s conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach *that no competent lawyer would have chosen.*” (emphasis added and citation, internal quotations, and brackets in original omitted)). The problem in Petitioner’s case is not the reasonable strategic decision made by Counsel but Petitioner’s dishonesty in consulting with Counsel.

B. Counsel’s disclosure of the location of Victim’s body for strategic reasons cannot be deemed deficient where Petitioner gave his informed consent and authorized the disclosure.

Petitioner’s informed consent and authorization for Counsel to disclose the location of Victim’s body is an important factor that should be considered by this Court. Petitioner argues that Petitioner’s consent is unimportant while also arguing that Counsel was deficient for violating confidentiality and attorney-client privilege. Petitioner’s arguments are contradictory since informed consent is an exception to the duty of confidentiality and attorney-client privilege can be waived by the client.

Professional standards and the Rules of Professional Conduct are not dispositive on the issue of ineffectiveness, *Strickland* precedent is the pertinent standard. *Strickland*, 466 U.S. at 688-89 (“[n]o particular set of detailed rules for counsel’s conduct can satisfactory take account the

variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant”). However, in Petitioner’s case, Counsel complied with the Rules of Professional Conduct regarding the duty of confidentiality and attorney-client privilege, and Petitioner made the choice to waive both.

Confidentiality under Rule 1.6 and attorney-client privilege can be waived by the client by giving informed consent and authorization to disclose the information. Rule 1.6(a), RPC, Rule 407, SCACR (defining informed consent as an agreement by a person to a proposed course of action after the lawyer has communicated reasonably adequate information and explanation about the material risks and reasonably available alternatives....).

At the pre-trial hearing, Counsel testified that Petitioner consented to the disclosure after Counsel discussed the benefits and risks of disclosing Victim’s body (App. 22-23). Counsel also testified that for Counsel’s trial strategy, he did not believe there were any reasonable alternative to the disclosure. (App. 21:8-14). *Bonilla*, 429 S.C. at 276, 838 S.E.2d at 12-13. Based on Counsel’s testimony, the trial court found Petitioner gave his informed consent for the disclosure, and Counsel did not violate Rule 1.6, RPC, Rule 407, SCACR. (App. 38; 20-21). *Bonilla*, 429 S.C. at 276, 838 S.E.2d at 12 (“[h]ere, Bonilla conceded that he consented to Leindecker's disclosure”). The Court of Appeals ruled that the trial court did not err in finding Petitioner gave Counsel his informed consent to disclose the location of Victim’s body. *Id.* at 277, 838 S.E.2d at 13 (“the circuit court did not err in finding Bonilla gave Leindecker his informed consent to disclose the location of Ashley's body”).

The Court of Appeals also determined that if Petitioner wished to challenge whether he gave informed consent, it would best be addressed in a PCR action since the PCR court would not be constrained by Rule 1.6 or attorney-client privilege. *Id.* At the PCR hearing, Counsel testified

that he explained to Petitioner the risks associated with the disclosure, and Petitioner consented. (App. 822-24; 831). The PCR court found Counsel’s testimony **credible** that he explained to Petitioner several times the advantages and risks of disclosing the location of Victim’s body and found that Petitioner consented to the discovery. (App. 864 (emphasis original)).

It is inconsistent for Petitioner to argue that Counsel was deficient for making a particular strategic decision where Petitioner gave his informed consent and authorized Counsel to make the decision. To support his argument that the questioned raised here is Counsel’s strategic decision and not Petitioner’s consent, Petitioner cited *Faretta*, stating, “when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to counsel the power to make binding decisions of trial in many areas.” *Faretta v. California*, 422 U.S. 806, 820 (1975). However, Respondent points to the very next sentence in the opinion that states, “[t]his allocation can only be justified, however, by the defendant’s consent....” *Id.*

Counsel’s power to make the binding and strategic decisions in Petitioner’s case was subject to Petitioner’s informed consent and authorization. Here, Petitioner freely, voluntarily, knowingly, and intelligently gave his informed consent for Counsel to disclose the location of Victim’s body to police as was determined by the trial court, the Court of Appeals, and the PCR court. *Bonilla*, 429 S.C. at 276, 838 S.E.2d at 12 (“Bonilla conceded that he consented to Leiendecker’s disclosure”); (App. 864 (“[t]his Court finds **credible** Leiendecker’s testimony that Applicant gave his informed consent to disclose the location of victim’s body...” (emphasis original))); (App. 38).

Petitioner argues Petitioner was “pressured” into revealing the body. However, the record refutes Petitioner’s assertion. Any pressure that Petitioner felt likely resulted from time constraints

due to Petitioner's own actions and inactions, not any pressure put on him by Counsel. Petitioner's assertion that he was "pressured" seems more like a post-hoc rationalization than a reality.

II. The PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel's disclosure of the location of Victim's body because there was sufficient of Petitioner's guilt for murder from other evidence including Victim's blood splatter in Petitioner's work van, Victim was last seen with Petitioner before her disappearance, and Petitioner made efforts to mislead police and Victim's family after her disappearance.

Petitioner failed to prove prejudice since there was sufficient evidence for the jury to convict Petitioner's for murder, regardless of the evidence from Victim's body. The focus of the prejudice inquiry is whether there is a *reasonable probability* that but for counsel's errors, *the result of the proceeding would have been different*. *Strickland*, 466 U.S. at 688 (emphasis added). The stronger the evidence presented by the State, the less likely the court will find the applicant met his burden of proving prejudice. *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 694)).

Victim was last seen with Petitioner on the night of her disappearance and was on video surveillance from a gas station with Petitioner in the early morning of April 4th, shortly before she disappeared. (App. 191; 201-02). The time that Petitioner and Victim were seen together is consistent with the State's timeline for when Victim disappeared. Petitioner was seen on video surveillance taking the Ford van from his job on the evening before Victim disappeared. (App. 217).

There was forensic evidence from the work van showing an assault had occurred. Police found a blood splatter in Petitioner's work van, and the blood matched Victim's DNA. (App. 265; 423). Police could have obtained a DNA profile of Victim to compare with the blood without her body. Bradley Mullis, an expert witness, opined that the blood splatter patterns in the van were

consistent with a person swinging either a weapon or fist in a repeated motion. (App. 409-11). The blood splatter evidence was consistent with an assault.

After Victim's disappearance, Petitioner sent Victim a message on the Kik app in an attempt to cover his tracks. (App. 164; 553). Petitioner misled Victim's sister about Victim's whereabouts, telling Victim's sister that he left Victim on the side of the road. (App. 167). Petitioners also misled police during their investigation into Victim's disappearance, telling officers that he did not have a job. (App. 223). Petitioner's cellphone location data corroborated his movements in his work van around the area Victim disappeared. (App. 384-85).

There was sufficient evidence for the jury to find Petitioner murdered Victim even if her body was never found. This is a fact admitted by Counsel at the PCR hearing. Counsel testified that he reviewed the evidence with Petitioner, and a body was not required for Petitioner to be charged with and convicted of murder since the surveillance video, blood splatter, and Petitioner's phone records were sufficient to allow the jury to conclude that he was guilty of murder. (App. 822). The State could have proven Petitioner's guilty for murder through evidence that Victim was last with Petitioner before her disappearance and Victim's blood was in Petitioner's van. *See State v. Owens*, 293 S.C. 161, 167, 359 S.E.2d 275, 278 (1987) (explaining an individual's sudden disappearance in a manner inconsistent with personal habits and relationships can establish the disappearance was "the result of death caused by a criminal act").

In addition, Petitioner intentionally misled both Victim's family and law enforcement in an attempt to cover-up the crime, which is evidence of malice. *State v. Brooks*, 428 S.C. 618, 631, 837 S.E.2d 236, 243 (Ct. App. 2019) ("[the defendant's] efforts to cover up his guilt indicate his malice"); *State v. Ballington*, 346 S.C. 262, 273, 551 S.E.2d 280, 286 (Ct. App. 2001) ("evidence [the defendant] attempted to cover up how his wife died suggests he killed her with a wicked or

depraved spirit”), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *see also State v. Pittman*, 137 S.C. 75, ___, 134 S.E.2d 514, 526-27 (1926) (recognizing that guilt can properly be inferred from an act of uttering false exculpatory statements).

The *only* way that Petitioner could have negated the murder charge was by proving the killing was not intentional, this could only be established by corroborating physical evidence because the jury was very unlikely to believe Petitioner’s testimony alone since he had serious credibility issues and a mountain of evidence against him. Without physical evidence, Petitioner had neither an accident defense nor any other defense. Petitioner’s best chance at negating the murder charge was an autopsy from Victim’s body. Counsel testified to this fact as well. Counsel testified that Petitioner was charged with murder, and the only way to prove Petitioner’s accident defense and negate the intent element of murder was corroborating physical evidence from Victim’s body. (App. 822-23).

Considering the evidence, Petitioner has failed to present any *reasonable* alternative to disclosing the location of Victim’s body that would have resulted in a different outcome. Petitioner supposes that without Victim’s body, Counsel could have negotiated for lighter sentence or lesser charge. In making such argument, Petitioner has taken the position that Counsel could have used the tragedy of Victim’s death as leverage for negotiations with the State instead of pursuing a reasonable, valid, and strategic accident defense to negate the murder charge. There is no evidence in the record to suggest that the State would have pursued or consented to a lesser charge or sentence where there was already sufficient evidence to obtain a conviction for murder. Additionally, Petitioner’s argument that the trial court would have imposed a lesser sentence without evidence from Victim’s body is speculative. Therefore, Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel’s disclosure

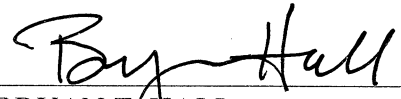
of the location of Victim's body. Accordingly, the PCR Court correctly found Petitioner failed to prove Counsel was ineffective.¹

¹ Petitioner argues that if he is re-tried, then suppression and exclusion of the evidence are the only possible remedies. However, this issue is not before this Court for consideration. The admissibility or exclusion of the evidence is in the trial court's discretion. In Petitioner's case, the trial court properly admitted the evidence upon a finding that Petitioner knowingly and voluntarily gave his informed consent for Counsel to disclose the location of Victim's body. The trial court's ruling regarding consent was affirmed on appeal. *Bonilla*, 429 S.C. at 277, 838 S.E.2d at 13 ("the circuit court did not err in finding Bonilla gave Leindecker his informed consent to disclose the location of Ashley's body"). Thus, the evidence was properly admitted, and it is not for this Court to consider and rule on the admissibility of the evidence in a hypothetical retrial.

CONCLUSION

Based on the foregoing argument, the PCR court correctly found Petitioner failed to meet his burden. Accordingly, the State respectfully requests that this Court affirm the PCR court's rulings and deny Petitioner's writ for certiorari.

Respectfully submitted,



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