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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

September 4, 2026

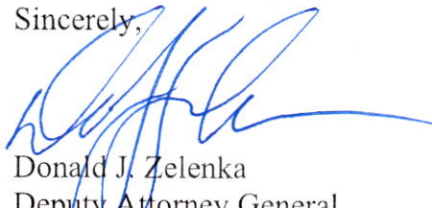
The Honorable Patricia A. Howard
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211
(via e-mail only - supctfilings@sccourts.org)

Re: Raeford D. Wideman v. State of South Carolina
Appellate Case No.: 2025-002426

Dear Ms. Howard,

Enclosed for filing please find the Respondent's Return to Petition for Writ of Certiorari in the above-captioned case. Petitioner is also being served with a copy of the same. Please let me know if I may provide anything additional at this time.

Sincerely,



Donald J. Zelenka
Deputy Attorney General
S.C. Bar No. 5758

DJZ/jh

cc: Wesley C. Norville, Esquire, Counsel for Petitioner (via e-mail only)

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

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Sep 04 2026

S.C. SUPREME COURT

On Petition for Writ of Certiorari to Anderson County
Court of Common Pleas
The Honorable Daniel D. Hall, PCR Judge
The Honorable R. Lawton McIntosh, Trial Judge
2020-CP-04-1112

Appellate Case No. 2025-002426

Raeford D. Wideman, SCDC #374579,

Petitioner,

v.

State Of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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QUESTIONS PRESENTED

Petitioner's Question Presented

Whether the PCR Court erred in finding that trial counsel was not ineffective for failing to interview or call three favorable defense witnesses?

Respondent's Questions Presented

- I. Where there is evidence in the entire record to support a presumption of competence in not calling three family members to testify, the PCR court's conclusion was reasonably supported by the record that the Petitioner failed in his burden of proof to prove deficient performance under *Strickland* and *Harrington* despite the disabled lawyer's unavailability to testify about his reasons.
- II. Even if deficient performance is assumed, the Petitioner also failed in his burden of proof to show a reasonable probability that the result of the proceeding would have been different.

STATEMENT OF THE CASE

THE STATE'S VERSION OF THE FACTS GIVING RISE TO THE CONVICTION

In the early morning of March 15, 2015, Petitioner, while standing on the passenger side of the vehicle, fired three gunshots into the vehicle striking and killing Ryan Tatum (Tatum). (App. p. 179).

Brianna Ware (Ware) testified that she, Taquna Blassingame (Blassingame), and Tatum went out drinking together in Greenville until 2:00 in the morning. (App. p. 264). Ware testified Tatum drove the two girls back to Petitioner's home in Anderson to retrieve Ware's car. (App. p. 265). Ware testified she could not get her car unstuck from the mud, and that Tatum and Willie McDonald attempted to get the car out of the mud but were unsuccessful. (App. pp. 266 – 277). Ware testified she asked Tatum to drive her home. Blassingame was intoxicated and laying down asleep in the back seat of the car. (App. p. 268). Ware testified that at this time, Petitioner came outside from the home and approached the passenger side of the car asking who Tatum was and why his sister was passed out in the backseat. (App. p. 269). Ware testified that she then heard multiple gunshots, ran out of the car, and took off running towards the house and stayed in the house until the police arrived. (App. p. 271). Ware testified that there was no other person outside at the time. (App. p. 271).

Willie McDonald (McDonald) testified that while on his way home from getting cigarettes from the store, he stopped by Petitioner's house to help Ware get her vehicle unstuck from the mud. (App. p. 294). McDonald testified that they were unsuccessful in pulling the vehicle out of the mud, and that he began walking

back up the street heading home. (App. p. 294). McDonald testified that he then heard the front door bust open, saw Petitioner run out to the car, and then he heard shots. McDonald testified that Tatum then reversed the car and hit a trailer. As Tatum reversed the vehicle, Ware screamed and jumped out of the vehicle. (App. p. 295).

Deputy Coroner Donald McCown (McCown) testified that he is a Deputy Coroner with the Anderson County Coroner's Office. (App. p. 152). McCown testified Tatum had sustained a gunshot wound to the back that exited the chest, to the right forearm, and to the left leg. (App. p. 179). McCown testified that in his opinion, Petitioner was standing near the rear passenger door. (App. p. 179) McCown testified that there was no evidence of physical confrontation or defensive wounds. (App. p. 180).

Nathan Mitchell (Detective Mitchell) testified that he is a detective with the Anderson County Sheriff's Office. (App.p. 182). Detective Mitchell testified that Petitioner gave a voluntary oral statement admitting to shooting Tatum and claimed it was an accident. (App. p. 192). (State Exhibit 7 at trial).

The trial court ultimately charged the jury with murder, voluntary manslaughter, and involuntary manslaughter. (App. pp. 374 – 319). The trial court also charged accident, self-defense, and defense of others. (App. pp 381 – 387). At the close of the trial, the jury found Petitioner guilty of Murder. (App. p. 405).

SUMMARY OF RELEVANT TESTIMONY FROM THE PCR EVIDENTIARY HEARING

PETITIONER RAEFORD WIDEMAN, JR. 'S TESTIMONY (APP.P. 495-540)

On direct examination, Petitioner testified that he was awoken by a loud noise outside his parent's home at 3:00 AM where he stayed with his parents and his girlfriend. App.p. 496. He stated that that looked out the front door and grabbed his handgun. App.p. 497-98. Petitioner testified that he saw Brianna Ware, his distant relative, and two guys he had never seen before were in the yard when he looked though the front door and then went outside. App.p. 497-498. Petitioner testified that he asked Brianna, who he saw come around the vehicle, where his sister was. He said Brianna may have been intoxicated and was babbling and screaming obscenities, and she told him the car was stuck in the mud. App.p. 498, 501. Petitioner testified that when he saw his sister Taquna Blassingame's SUV vehicle in the driveway, he became concerned. Petitioner testified he walked

towards Blassingame's vehicle in the driveway and was not sure what was taking place. App.p. 499-500. He said he saw Blassingame laying down, unconscious and unresponsive, in the backseat of the vehicle. App.p. 502.

Petitioner stated that he asked Brianna what happened. App.p. 503. Petitioner testified that at that point Tatum got into the driver's side of the vehicle, and Petitioner asked Tatum about Blassingame and told Tatum that he could not leave with his sister. App.p. 503-504. Petitioner testified that Tatum was nonchalant and did not respond to any of his questions about Blassingame. App.p. 505. Petitioner testified Brianna was telling Tatum that Petitioner was Blassingame's brother. App.p. 505.

Petitioner testified that he told Tatum to turn the vehicle off. App.p. 506. At this point, Petitioner's father was on the porch, and Petitioner was at the vehicle door trying to check on Blassingame and get her out of the vehicle. Petitioner testified his father approached to the vehicle and told Tatum that it was his vehicle and that Tatum could not leave with his daughter. App.p. 506. Petitioner testified that his father was trying to get the keys, and Tatum did not turn the vehicle off and did not stop or get out of the vehicle. App.p. 506-507. Petitioner testified that Tatum then stepped on the gas while he was in the door of the vehicle.¹ App.p. 507. Petitioner testified that there was a ditch in the driveway, and as he was trying to get out of the vehicle door, he shot at Tatum. Petitioner testified that he was defending himself and his sister.² App.p. 507. Petitioner testified that the vehicle hit the right side of his body as he was trying to get out and his neck was sore. App.p. 508. Petitioner testified that his mom called the police.

Petitioner testified that, initially, he was not completely honest with the police, but that he did tell the truth later and cooperated. App.p. 509. Petitioner testified he had told the police where the gun was, that the gun was his and that he was the shooter. App.p. 509-510. Petitioner testified he had never met Tatum before that night and did not know he was dating Blassingame. App.p. 510. Petitioner testified he was emotionally

¹ It was disputed at trial that the victim stepped on the gas. Rather, it was testified at trial that he put the car in reverse and did not floor it. App.p. 70.

² In his statement to the police, he claimed it was an accident and that he did not intend to shoot him. He did not indicate it was to defend himself. App.p. 192, l. 3-10. In the Castle hearing when Wideman testified, he claimed for the first time that he was trying to defend himself and his sister, though he also testified he fired at the suspect when the car door hit him. App. p. 47-48. Compare App.p. 56-57 ("not willingly or wanting to shoot the guy"). State Exhibit 7. In an oral statement he initially claimed he fired only once. Three shell casings were found at the scene. App.p. 196. However, the investigating officer did not think it was an accident even though Wideman declared in his interview that it was. App.p. 256.

distraught and had a close relationship with Blassingame. App.p. 511. Petitioner testified that when he shot at Tatum, he was trying to stop him from leaving with Blassingame. He claimed he was in the doorway when the victim started to back up, and the door hit his right side. when he was trying to get out of the way. He also stated (unlike his statement in Exhibit 7) that he was trying to stop him hurting him or his sister. Petitioner testified he was unsure how many times he fired the gun and now thought it was three or four times. Petitioner testified he fired so many times because he felt like he had no choice and it was just instincts. App.p. 511-512. Petitioner claimed that he didn't start firing until Tatum started actively backing the vehicle up. App.p. 512. Petitioner testified he was worried about Tatum leaving with Blassingame before she received medical attention. Petitioner testified he grabbed the gun at the house because he didn't know what was going on outside and did not know the intentions of the two guys outside. App.p. 513. He further stated that his nieces, nephews, his pregnant girlfriend, and parents were all asleep in the house. App.p. 514.

Petitioner claimed he didn't have discussions with Trial Counsel. Petitioner asserted Trial Counsel was negligent about preparing the case and did not tell him too much about how everything works. App.p. 514. However, Petitioner testified that Trial Counsel told Petitioner they should pursue the defense of accident. App.p. 514-515. Petitioner testified that the testimony he had provided at the PCR evidentiary hearing would be the testimony he would have given at trial had he testified. However, he also said that he would not have testified that it was an accident and the door hitting him accidentally caused his gun to discharge. App.p. 515-516. Petitioner testified that Trial Counsel didn't explain how the defense of accident fit with the facts of his case but merely told him we're going forward with it. However, Petitioner testified they also discussed the defense of others and self-defense but did not explain to him how the defense of accident and defense of others and self-defense would work together and how that would have impacted the jury. App.p. 516-517. He confirmed that counsel indicated to him that it was accident because the car door hit his arm and caused the gun to accidentally discharge. App.p. 517-518.

Petitioner testified that Trial Counsel advised him it would be best if he did not testify (in front of the jury) because the recording in the interrogation room was enough to show his claim of accident (State Exhibit 7). App.p. 518-519. Petitioner testified Trial Counsel did not talk often with Petitioner, and he recalled three

meetings during the whole process discussing and reviewing facts and discovery. App.p. 519. He indicated that the plan was to go forward with accident. In hindsight he now asserted he would not have said it was accident.

Petitioner testified he provided Trial Counsel witnesses to interview, including his parents and his sister. App.p. 520. Petitioner testified that Trial Counsel said his sister Taquna was passed out drunk, and counsel did not want her to testify because she was the reason Petitioner was charged. Petitioner testified that he believes if the witnesses were called, it would have changed the outcome of his trial and supported his claim of self-defense and defense of others. App.p. 520-21.

On cross-examination, Petitioner testified the first statement he gave to police was that he didn't do it. App.p. 522. Petitioner testified that in recorded statements that were produced at trial, his statements were pretty much the same as his testimony at the PCR hearing. App.p. 523. However, Petitioner recalled testifying earlier that he did not mean to shoot Tatum and that it was accidental. Petitioner testified that he was emotionally distraught and mixed up with what took place. Petitioner testified Trial Counsel did not correctly explain how accident and self-defense differ to him. Petitioner testified that he did say at the immunity hearing that he didn't mean to shoot him, but he now claimed that he meant he didn't intentionally shoot him and that it just happened "at the spur of the moment." App.p. 525. See App.p. 56. He asserted that he did not want to shoot Tatum. Petitioner testified that the door caused him to shoot because he felt like his life was in danger because the vehicle was enough to hurt him when Tatum stepped on the gas. App.p. 526. He claimed the gun was in his left hand because he was trying to get his sister out of the car. App.p. 526. When asked about his immunity hearing testimony (App.p. 59) that he actually had the gun pointed downward and indicated that he was not trying to shoot his gun at all which sounded like accident and not defense of others, Petitioner responded that although he was not planning on shooting anyone, he felt that he had no choice and that his life was in danger when the Tatum backed the car in reverse. App.p. 527.

When asked why he thought his life was in danger, Petitioner confirmed that he had not seen Tatum before, and he did not see a gun on him. App.p. 528. He acknowledged that Tatum was sitting there with his seatbelt on and acknowledged that his sister did not live there at that time. App.p. 528. However, Petitioner claimed that his sister was not in the condition to be driven around and if Taum cared about his sister he would

have done something that night and turned off the car to check on his sister. The Petitioner confirmed that Brianna was in the front seat , but Petitioner asserted that she was belligerent and not providing any information.

However, when asked about shooting four times into the vehicle across the bodies of his cousin and his sister was appropriate or if it was an accident, Petitioner contended "that was after he stepped on the gas in reverse that he shot." App.p. 528-529. The Petitioner was asked with the information that he was not trying to shoot anyone and he spoke with his lawyer, a decision was made after talking with his lawyer to testify at the immunity hearing rather than in front of the jury after the immunity hearing was denied and rely upon the prior statements testimony given in court to law enforcement and not testify aware that his own testimony would not come in, the Petitioner claimed that he was not aware that he did not know that not testifying was going to somehow incriminate him. App.p. 529. When asked about the fact that with his statements coming in and that the evidence from Solicitor Overby's cross-examination from the immunity hearing would not come before the jury that was not consistent with his theory and the statements and the manner of his cross-examination, the Petitioner acknowledged that he confirmed to Judge McIntosh and that his lawyer told him that it was best for him not to testify. The Petitioner stated that the interrogation tape was enough and that is what convinced him. The Petitioner acknowledged that Judge McIntosh found that there was some evidence of accident withing the law enforcement interrogations and agreed to charge the jury with the defense of accident, self-defe3nse and defense of others without being subjected to cross-examination. App.p. 530-531.

The Petitioner stated that at the incident that he was on the passenger side of the vehicle in the back door but claimed that he had not approached Tatum before he got to that side of the vehicle. He claimed that after he left his porch, the gun was at his side and not being shown in the same (left) hand when he approached the car. App.p. 532. He thought that Tatum would not have seen the gun and that it was only there for his protection because he did not know who these people were but did speak with Brianna and had asked them what

they were doing in his yard. App.p. 532. He had learned that her car was stuck in the mud which was making the banging sound . App.p. 532-533.

The Petitioner stated that his father was initially on the porch when he was in the passenger side back door and he had to call him and he claimed that he was standing over the side of the car at that time and visible to his father. App.p. 534-535.

Petitioner testified that he shared all his information with counsel Robinson. He claimed Taquna Blassingame could have testified that he did not know Tatum, that she could have been offered as a character witness and testified about the earlier events leading to the shooting. App.p. 535. Petitioner testified that he told counsel Robinson that Rose could have testified that she called the police, to his character, and to the events that took place that she saw that evening. He also claimed that he told Robinson that his father was at the scene and was initially on the porch and came up to the car that night and where Petitioner was at the time of the shooting. App.p. 535, l. 13-536, l. 9.

The Petitioner confirmed that he spoke with Robinson about accident , self-defense and defense of others, as well as his testimony. App.p. 536, l. 10-14.

On re-direct, Petitioner claimed that Brianna was real belligerent and not aware what was going on and appeared drunk. App.p. 537. The Petitioner claimed that the vehicle was moving when the door hit him and Tatum was leaving his house with his father's car and his sister. The Petitioner could not recall where his father was when the shooting happened, other than telling Tatum to park the car and turn it off. The Petitioner contended that if Robinson had interviewed his mother that he would have learned she could have testified about Brianna's condition. App.p. 538-39.

ROSE WIDEMAN'S TESTIMONY (APP.P. 541-584)

On direct examination, Rose Wideman, the Petitioner's mother, testified she initially met with counsel Scott Robinson, and he explained how he was going to get the charges thrown out as if it was an accident. App.p. 542-543. He asserted to her that it would be better to pursue the defense of accident. However, Rose testified she told Trial Counsel that she thought it would be better to use the defense based on a defense of Taquna Blassingame, because she was knocked out, but counsel stated that the best way was for accident. App.p. 543. Rose testified that she met with Trial Counsel herself, made payment arrangements, and spoke to him about three

times. App.p. 543-544. Rose initially testified that Trial Counsel never interviewed her, although she tried to be a witness. App.p. 544. Rose indicated that Trial Counsel did not give her any strategy for not wanting her to testify. However, Rose testified Trial Counsel told her that if she was a witness, they would charge her for not saying that her son did the shooting when she was interviewed by law enforcement. App.p. 544-545. Rose testified that she provided Trial Counsel with her version of the events from the night of the shooting, but Trial Counsel did not want her to testify because he said charges could be brought against her. App.p. 545-546.

Concerning what she told counsel about the incident and her possible testimony, Rose indicated that on that night she was awakened by her husband. She stated that she went outside and went down and stood by the car. She stated that Petitioner was standing in the middle of the passenger door. App.p. 546-547. She stated that she saw her husband by the driver's side door in the yard and Brianna was in the passenger seat. She heard Petitioner talking to Tatum but could not hear what he was saying until she got closer. App.p. 548-549. She claimed that she was standing behind Raeford the whole time and right beside him on the other side of the door. App.p. 549.³

Rose testified that she saw her daughter in the back seat in a fetal like position. App.p. 550. She stated that Petitioner was concerned and wanted her daughter to be checked on and asked Tatum to turn off the ignition. App.p. 550- 552. Rose claimed that her husband was standing in front of the vehicle. App.p. 551.

Rose then testified that she was talking to Brianna asking what happened and had to jump back once Tatum started moving the vehicle, because her feet were there. App.p. 553-554. She saw that her daughter was not responsive. Rose testified that once Tatum started reversing the vehicle, the vehicle pulled Petitioner backwards but did not knock him to the ground as it reversed. App.p. 555-556. She claimed that Raeford shot Tatum while the car was still moving. App.p. 557. Rose testified that she was concerned about Petitioner's and Blassingame's safety. App.p. 557. She stated that once the shooting happened, she started yelling, ran to the house and called 911. App.p. 558. Rose opined that Petitioner was still in danger when he shot Tatum and the

³ This testimony contrast with Brianna Ware's testimony at trial who stated that Petitioner's mother who she claimed she ran into the house to get his mother after the shooting and his mother asked what was going on. App.p. 71 (hearing). Ware claimed that no one else was outside at the time of the shooting. App.p. 271-272. She claimed after the shooting that she ran in the house and got Petitioner's mother. App.p. 272.

car was moving. App.[p. 558. She said that she was concerned about the Petitioner and her daughter's safety when the victim was backing up.

Rose testified that after the shooting, she checked on her daughter. She stated that Taquna was still in the vehicle and passed out and the vehicle hitting the trailer did not wake her up. App.p. 559-560. Rose testified that her daughter was admitted into the hospital, and she did not wake up until twelve hours later. App.p. 560-561. Rose testified that the detective said her daughter had alcohol poisoning. App.p[. 561-562, 566. Rose testified that she believes if Petitioner did not act, her daughter would be dead.

Rose claimed that Brianna's previous testimony at trial was not correct. App.p. 563. Rose stated that Brianna's testimony that after the shooting that she went up to the house and got Rose was incorrect because Rose now claimed that she was already in the yard before the shooting occurred. Rose said that she informed the trial counsel of this. App.p. 563-564. Rose testified that counsel told her that if she testified that she could potentially be charged. App.p. 564-565. She stated that counsel Robinson "just told me that if I testified that I could get charged and he said, but we're the only two that know about it, so it's not going to go any further." App.p. 565, l. 1-4. ⁴

TAQUNA BLASSINGAME'S TESTIMONY (APP.P. 585-602)

On direct examination, Blassingame testified she never talked to Trial Counsel personally or anyone else in the case. App.p. 585. She indicated that she had dropped off her children earlier that night at her mother's

⁴ On cross-examination, Rose testified that she gave a different statement to law enforcement. Rose testified that she initially went along with Petitioner's story that Petitioner was not the shooter, App.p. 566-567. She stated that she later told Petitioner that they had to tell the truth. App.p. 567. When asked why Raeford did not testify that way in the trial that she was out there by the car, Rose claimed that she was there. App.p. 567-568. Rose testified that although Petitioner was not knocked down when the car backed up, Petitioner was pulled back with the vehicle. She claimed Petitioner shot Tatum when Tatum started reversing the vehicle. Rose stated that she saw Petitioner pull the gun out and shoot it with his right hand. App.p. 573. She did not see Petitioner try to take her daughter out of the car. App.p. 573. She claimed that she saw Tatum at the time just looking straight forward. App.p. 574. She claimed that she heard her son asking Tatum to stop the car after it was moving so he could check on his sister. App.p. 574-575. She later claimed that she meant rather than asking to stop the car meant to say to cut the car off. App.p. 576. In contrast to earlier testimony, she indicated that her son was knocked down when the car started moving. App.p. 576. She claimed that he shot the victim when the car started moving backwards. App.p. 577. Rose testified that Petitioner hid the gun in the house after the shooting because he was afraid and was not thinking. Rose testified that she told counsel Robinson everything that shew had testified about and her concern about her daughter's wellbeing and why Petitioner thought that her life was in danger. App.p. 583. Rose testified that Trial Counsel told her she would be charged with a crime if she testified. App.p. 583. [The PCR Court recognized that by these admissions about her allegedly false statements to her son's counsel,

house before she went out around 9 PM. App.p. 587. She then went out initially to cousin's house and began drinking. She met with Brianna there and they went to three different clubs. App.p. 587. Blassingame testified everyone was drinking, including Tatum, and that she was the most drunk out of everyone. App.p. 588.

Blassingame testified she was friends with Tatum, but they were not physically intimate, and they were going slow in their relationship and went out together in groups. She stated that she had mentioned Tatum to her mother and showed her his picture after he had given her a Valentine's Day gift of earrings. App.p. 590. However, she claimed that he was not her boyfriend at that time. App.p. 590-591. Blassingame testified she never spoke to Petitioner about Tatum and never brought him to her parent's house.⁵ App.p. 591. She claimed that Tatum had only come over to her house once.

Blassingame testified that she had been drunk before but felt that at that time she was possibly drugged and only remembered going to the last club, but that was all she remembered from that night. App.p. 592-593. Blassingame testified the car Tatum was driving was in her father's name, but she paid for it. App.p. 593. Blassingame testified that the first thing she remembered after the incident was waking up in the hospital. App.p. 593-594. The Petitioner introduced photographs of her from the hospital when she was passed out and in the bed. App.p. 594-597.

She stated that she did not remember the shooting, the car accident, or the gunshot. App.p. 597. She further testified that her brother did not know Tatum App.p. 599. In hindsight, she stated that when she learned the victim's blood alcohol content at trial that she would not have wanted him to drive her car. App.p. 599.

On cross-examination, Blassingame testified she knew the Tatum for about five months. App.p. 600. Blassingame testified that she was never in a relationship with him, and they always hung out in a group setting.

Rose could have been investigated for making a false statement to law enforcement related to the possibility of accessory after the fact, potentially obstruction of justice due to the prior interaction with the police at the crime scene about a different version of their action or possible perjury related to the potential testimony at trial, if counsel was aware of its falsity. However, due to counsel Robinson's current condition, this distinction is not known with clarity, other than that her new version would have subjected her to strong impeachment based upon the inconsistency of her statements. App.p. 642, Order, p. 11-12.]

⁵ Taquana Blassingame was not living at her parent's house at the time of the incident.

App.p. 600-601. She indicated that she once brought him to her house. App.p. 601. Like her mother, Blassingame indicated that she hardly speaks with Brianna anymore. App.p. 601.

Although she claimed that she did not have much of a relationship with Ryan Tatum prior to the shooting except being friends for five months, she acknowledged that she had Tatum's name permanently and visibly tattooed to her chest. App.p. 601. She claimed that it was done after his death and not before. App.p. 601-602.

RAEFORD WIDEMAN SR.'S TESTIMONY (APP.P. 603-617)

On direct examination, Raeford Wideman Sr. testified that he spoke with Trial Counsel in one meeting where Trial Counsel talked to them as a group. App.p. 603-604. Wideman Sr. testified that Trial Counsel never discussed strategy with him and did not tell him why he did not want him (Wideman, Sr.) to testify. *Id.* He stated counsel indicated to him that he would get in trouble if he did so.⁶ App.p. 605. He stated that counsel claimed that it would be best if he did not testify. He claimed he only spoke with counsel one time in Greenville and that counsel did not ask him what happened that night. App.p. 604. Wideman Sr. denied that Officer Gebing had interviewed him at the scene although he recalled sitting in the police car. App.p. 604.

Wideman Sr. testified that he recalled waking up that evening to go to the restroom and saw his son at the car. He stated that his son called him down and advised him that Taquna was passed out in the back seat and that this person was trying to back up and leave. App.p. 605. He claimed he got his wife and went down to the front of the car which was still running. He saw Taquna in the back seat and he heard his son ask Ryan to let him check on his sister. App.p. 605.

Wideman Sr. stated that as he walked around the car, Ryan started to back up. App.p. 605. He initially claimed at that point his son was between the door of the car and behind him was a big ditch. App.p. 606. He stated that car was backing up, and he heard a shooting and thought it was Ryan Tatum shooting, but he had claimed that he had never seen his son with a gun. App.p. 606..

Wideman Sr. stated that when he came up to the car before this, he asked Tatum to give him the keys and turn the car off, but Tatum did not say anything to him. App.p. 607. The Petitioner was on the other side,

⁶ The PCR Court found that, although not stated in his testimony, this appears to be related to the possibility of accessory after the fact and obstruction of justice potential due to the prior interaction with the police at the crime scene about a different version of their action. App.p. 644. Order, p. 13.

inside the passenger door at the time. Wideman, Sr. claimed when Tatum was backing up the car, he thought Petitioner could be killed and fallen into the ditch, and he was concerned that Taquna might have died if they left. App.p. 607. Wideman Sr. testified that Tatum was out of it and was not planning to stop the car. App.p. 608.

Wideman Sr. testified that he had never seen Tatum before and did not know Tatum's last name, phone number, or where he lived, and had no way to find him if he left with his daughter. App.p. 609. Wideman Sr. testified that Petitioner was in danger, and his son did what he believed he had to do as a last resort. App.p. 610. Wideman Sr. testified that Petitioner lied at first, and believed that he was scared, eventually told the truth. App.p. 610. He claimed that knowing what he knew now about his daughter's appearance in the back seat at the time and her alcohol poisoning causing hospitalization, she would not have survived if Ryan had driven off with her. App.p. 610.⁷

STANDARD OF REVIEW

Generally, "[o]ur standard of review in PCR cases depends on the specific issue before us." *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). "We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them." *Id.* (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). "We review questions of law de novo, with no deference to trial courts." *Id.* at 180-81, 810 S.E.2d at 839. Whether trial counsel was deficient and whether any deficiency prejudiced a PCR

⁷ On cross-examination, Wideman Sr. denied that he had seen his son with a gun and had initially thought that Ryan had fired the shot, not his son. App.p. 611. Wideman Sr. testified he did not see Ryan with a gun and was only asking him to give him the keys and to cut the car off as he was walking up to the car and he was already backing up. App.p. 612. He denied realizing that his son could have accidentally shot him when he was on the other side or had shot until he saw the gun. App.p. 612-613. He claimed as far as he knew Ryan had shot his son initially. App.p. 613. Wideman Sr. indicated that he first saw his daughter in the car when he walked up to it and was asking for the keys. App.p. 614. Wideman Sr. testified he was a couple of feet away from the vehicle during the incident. However, Wideman Sr. claimed that he had not gotten close enough to touch the window, although also claimed that he knew she was unresponsive in the back seat. App.p. 614-615. Wideman Sr. also claimed that he did not know much about Brianna who was in the car, even though "she's supposed to be a cousin." App.p. 614.

Wideman Sr. testified he met with Trial Counsel Robinson one time in Greenville. He stated that he came to court but did not talk to counsel there. He claimed that his son had had a number of interviews with law enforcement that night and told the truth in court and to the police. App.p. 615. Wideman Sr. testified Petitioner told the truth at trial (during the Castle doctrine hearing). App.p. 615. Wideman Sr. testified he was not involved in discussions concerning Petitioner's right to testify. App.p. 615-616. Wideman Sr. testified Trial Counsel told him why it was best he did not testify when he met with them and during court.

applicant are questions of law. *Lindsey v. State*, No. 2019-001271, 2025 WL 3085693, at *13 (S.C. Nov. 5, 2025).

ARGUMENT WHY CERTIORARI SHOULD BE DENIED

I. WHERE THERE IS EVIDENCE IN THE ENTIRE RECORD TO SUPPORT A PRESUMPTION OF COMPETENCE IN NOT CALLING THREE FAMILY WITNESSES TO TESTIFY PCR COURT'S CONCLUSION WAS REASONABLY SUPPORTED BY THE RECORD THAT THE PETITIONER FAILED IN HIS BURDEN TO PROVE DEFICIENT PERFORMANCE UNDER *STRICKLAND* AND *HARRINGTON* DESPITE THE DISABLED LAWYER'S UNAVAILABILITY TO TESTIFY ABOUT HIS REASONS.

In his petition before this Court, the Petitioner suggests a questionable standard that because no lawyer was available due to disability to testify about his reasons for his actions or inactions, Sixth Amendment deficient performance must be presumed and relief granted. This conclusory standard is not supported by the reasoning of the United States Supreme Court and misreads the decisions of this Court in addressing the deficiency prong of the Sixth Amendment analysis under *Strickland v. Washington*. Because there is evidence in the record revealing reasonable performance by trial counsel actions in not calling the family members, certiorari is not warranted. To accept the Petitioner's position undermines the foundation of *Strickland* which places the burden of proof in showing deficient performance on the convicted defendant and carries a presumption that counsel acted reasonably in his performance. The Petitioner's misguided argument is a dangerous assertion which could allow a windfall of relief when counsel becomes deceased or mentally disabled subsequent to a conviction.

As the United States Supreme Court has observed, *Strickland v. Washington*, 466 U.S. 668 (1984) "calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind." (*Emphasis added.*) *Harrington v. Richter*, 562 U.S. 86, at 110, 131 S.Ct. 770 (2011). As a result, the habeas court cannot "insist counsel confirm every aspect of the strategic basis for his or her actions." *Id.*, at 109, 131 S. Ct. 770. Likewise, a trial counsel's testimony may identify specific strategic or tactical reasons counsel had for the challenged action, but the habeas court is not confined to consider only those reasons identified. Rather, in all circumstances, the strong presumption of *Strickland* that counsel exercised reasonable professional judgment requires the habeas court "to affirmatively entertain the range of possible reasons" trial counsel might have had for the challenged action. (Internal quotation marks omitted.) *Cullen v. Pinholster*, 563 U.S. 170, 196, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011). The suggestion by the Petitioner that unless a lawyer actually articulates a

strategic reason in a hearing that relief must given is misplaced. The suggestion undermines the burden of proof in *Strickland* placed upon the Petitioner rather than the State.

This is particularly evident in addressing situations when trial counsel is either deceased or due upon a disability or disease unable to testify or not available to testify.⁸ The absence of such testimony does not and cannot alter the relevant *Strickland* inquiry. To suggest otherwise as the petitioner claims in this proceeding would require that anytime a lawyer died after a verdict or conviction, post-conviction relief would be required in every case because there was no witness to address strategic reasons. In that circumstance, as always under the U. S. Supreme Court decisions in *Strickland* and *Harrington* demand, the hearing and appellate court must contemplate the possible strategic reasons that might have supported the challenged action and then consider whether those reasons were *objectively* reasonable. See, e.g., *id.*; *Strickland v. Washington*, supra, 466 U.S. at 689, 104 S.Ct. 2052. See *Thomas v. Thaler*, 520 F. App'x 276, 283 (5th Cir. 2013) (habeas case challenging a deceased lawyer's failure to object and stay silent. The *Thomas* court noted that it had read *Strickland* as "call[ing] for an inquiry into the *objective reasonableness* of counsel's performance, *not counsel's subjective state of mind* [.] in the same opinion that it purported to affirm that a court still "may not indulge 'post hoc rationalization' for counsel's decisionmaking that contradicts the available evidence of counsel's actions[.]" Reconciling those statements is no easy task, and it is unclear how, short of a candid admission that he was unfamiliar with the law, a lawyer might be deemed to have provided ineffective assistance for failing to raise an objection when strategy could conceivably justify silence. "As Thomas's deceased lawyer [*and Scott Robinson here*] cannot provide answers, the reasons for her decisions at trial—if indeed they were "decisions" at all—will remain forever unknown. A federal court evidentiary hearing would do little good, if any, even if the facts there discovered could be considered." The *Thomas* court concluded "Because the trial transcript—the only evidence of deficient performance in the state and federal court records—does not indicate that defense counsel acted unreasonably in failing to object to the prosecutor's remarks, the CCA was not unreasonable in denying Thomas's petition" *without a hearing* as did the deferral court. Similarly in *Callahan v. Campbell*, 427 F.3d 897 (11th

⁸ This is not a unique circumstance in S.C. This Court can take judicial notice of the many active defense lawyers who have recently died or become disabled including Stanley Myers, Wayne Floyd, among others who died while PCR matters were pending.

Cir.2005), one of the penalty-phase counsel passed away before the postconviction evidentiary hearing and, as a result, the United States Court of Appeals for the Eleventh Circuit relied on the record and presumed that counsel had reviewed the relevant documents, questioned Callahan's family and friends about mitigation, and had a discussion with Callahan about what mitigation to present during the penalty phase. *See* 427 F.3d at 932–36. As the Eleventh Circuit noted, the burden was on the habeas petitioner – not the State – to prove that his deceased counsel did not take those steps. *See id.* at 933.

Respondent notes that recently in another case with a deceased lawyer, the South Carolina Supreme Court stated: “We have held that neither the PCR court nor the appellate court can conclude trial counsel exercised a valid trial strategy unless evidence is presented as to what the strategy actually was. *See, e.g., Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014); *Smith v. State*, 386 S.C. 562, 568, 689 S.E.2d 629, 633 (2010); *Gilchrist v. State*, 350 S.C. 221, 228 n.2, 565 S.E.2d 281, 285 n.2 (2002); *Bruno v. State*, 347 S.C. 446, 451, 556 S.E.2d 393, 395-96 (2001). *See Lindsey v. State*, 447 S.C. 93, 924 S.E.2d 104 (2025).

However, in those cases, the Court’s findings were based upon matters where this Court concluded that the articulable strategy was not, unlike the instant case, supported by the record. In *Lindsey*, counsel was deceased at the time of the PCR hearing. This Court found that counsel’s deficiencies did not create 6th Amendment prejudice requiring relief. In its assessment, the Court noted that the PCR court determination that the deceased lawyer exercised reasonable professional judgment, the first prong of *Strickland*, was error as it related to the failure to retain or call a prison adaptability expert because there was no evidence why he did not retain or call an expert to testify. *Lindsey v. State*, 447 S.C. 93, 133, 924 S.E.2d 104, 126 (2025). It is different in this setting because there was evidence why the witnesses were not called because upon their testimony or evidence in the trial record and was not the product of neglect. The PCR Court addressed this similarly. *See App.* 663

The PCR Court initially found applicable the strong presumption that at all stages of Trial Counsel's representation of Petitioner, he rendered adequate assistance and exercised reasonable professional judgment in his representation. *App.p.* 649. *See Strickland*, 466 U.S. at 689 (noting that courts are to “indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be

considered sound trial strategy' ” (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 100 L.Ed. 83 (1955)). We further consider that “strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable,” *Strickland*, 466 U.S. at 690—“unless they were ‘completely unreasonable, not merely wrong.’ ”

The PCR Court found that record is clear that defense counsel Robinson presented evidence a defense version based upon the Petitioner’s own statements theories of self-defense, “defense of others” and accident. App.p. 651. The PCR Court also found that all of these theories were based upon inferences from the Petitioner’s own statements with law enforcement as well as some forensic evidence he relied upon including location of the injuries, location of the shell casings, and the pathologist’s testimony. In addition, the multiple theories were revealed before the Trial Court, but not the jury, in Petitioner’s *in camera* testimony on the Castle issue. These decisions were also made with the understanding and expectation that the Petitioner was choosing not to testify before the jury. The decision was also made when counsel, over objections, was able to get requested instruction on defense of others, as well as self-defense and accident.

During the Castle doctrine hearing, the Petitioner testified, unlike during the jury trial when he waived his right to testify. During his *in camera* testimony, he claimed he woke up at 3 AM when he heard a loud noise. He stated that he opened the door and saw an SUV in his yard. He said he had learned from Brianna that his sister Taquna was in the car. He saw Ryan Tatum go to the car and get in the driver’s seat. Petitioner claimed that he told Tatum to turn the car off and Tatum then asked Brianna who this person was and learned it was Taquna’s brother. Petitioner saw that his sister Taquna was passed out in the back seat.⁹ Petitioner asked what was wrong with Taquna because she was unresponsive. Petitioner said that his father came down from the porch and Petitioner told his father that his daughter Taquna was passed out in the back seat and that this guy was trying to drive off with her. Petitioner said that the vehicle was his father’s, and Tatum was asked to turn off the car again but did not. Petitioner claimed that Tatum looked at him and said “f--- you.” Petitioner claimed he reached down to take his sister out of the car with his firearm in his left hand. Petitioner also stated that he was right handed. Petitioner said at that point that Tatum “stepped on the gas,” the door of the car then hit Petitioner’s

⁹ Taquna did not live at this house, but elsewhere.

right side and that the gun fired at Tatum more times than Petitioner wanted. Petitioner claimed he chased the car as it rolled. He claimed he did not want to shoot his sister and initially claimed in the hearing that he shot the gun because he thought that both his and Taquna's lives were in danger. App.p. 45-47. Petitioner claimed that after it backed into a trailer, he went to the car and put it into park from reverse. App.p. 49. He claimed he had been in fear because the car backed up into him on the passenger side and he thought he could end up crushed underneath the car. App.p. 51.

On cross-examination in the Castle hearing, inconsistencies in his statements to police and the testimony were pointed out. Initially Petitioner told the police that he had not shot Tatum, but that it was some random person who came up and shot Tatum. App.p. 54, ll. 4-7. Petitioner admitted that he had left the area after the shooting, went into his house and hid the weapon. App.p. 54. Petitioner confirmed that he had never told law enforcement that the guy tried to kidnap his sister and that was why he fired the shots. App.p. 55. The State pointed out that in the statement he gave police on the night of the murder that he claimed it was an accident. The Petitioner confirmed stating that he was "not willingly or wanting to shoot the guy, but it happened in the spur of the moment with this guy backing up into me with the car and the door of the car hitting me." App.p. 56.

I was bent down and the door, at the angle that hit meI was trying to get out of the way of the car at the same time to catch my balance at that same time, and I had all of these fears and being scared ... of the car backing up into me. So when the door hit me ...with me trying to back up out of the door of the car, it is just natural reflexes and just reflexes caused me to ... pull the gun, just clutch the gun.

App.p. 57-58. When asked if he was concerned about having the gun point at his sister, Petitioner stated that "the gun was actually pointing downward and I was not trying to shoot this guy or my gun at all, you know for that matter. It just happened when he backed the car up and ... it just happened." App.p. 59, ll. 12-17.

During the trial, the car's movement was described differently by Brianna as only rolling slowly backward when the shooting happened. App.p. 271. (Brianna also claimed that no one was outside at the time and she ran up to the house to get Petitioner's mother. Tr .p. 272. Brianna also testified that prior to the shooting she heard the Petitioner say to the victim to park the car. App.p. 275.

Willie McDonald testified that when he came upon the scene prior to the shooting, Brianna had come up to him and asked him to help get the Jeep out because it was stuck in the mud. While McDonald was having

a discussion and moving stuff Petitioner came out of the house and McDonald left the area and went across the street:

That's when I heard the front door bust open and the defense, he run out to the car, and I heard shots. You know, what I'm saying. I ducked down like whoa, what's going on. And then I just stood there on the side of the road you know, I got down like that. And that's when the dude got in the car well, he was in the car. And he reversed it backwards, all the way across the road, and hit that tongue of that trailer. And I didn't know if everybody was shot or what. I didn't know. And then Bri jumps out screaming and hollering. ...

App.p. 295. McDonald also heard the Petitioner state as he was leaving the house prior to the shooting: "you are going to die, mother f----- like that that's when I...heard the shots at the same time" before Petitioner went to the driver's side, but McDonald claimed he did not see the actual shooting. App. p. 296.

The record reflects Trial Counsel did pursue a Castle Doctrine hearing where Petitioner testified and ultimately the Trial Court found Petitioner did not meet his burden of proof by a preponderance of evidence that the Castle Doctrine applies. (App. p. 119). Further, Petitioner himself testified on direct examination at the pre-trial hearing that "I did fire at the suspect, but in the business of me firing, the door of the car hit me also, so I fired more than I wanted to." (App. p. 51). Additionally, at the pre-trial hearing, on cross-examination, Petitioner testified that with him trying to back up out of the door of the car, his natural reflexes caused him to pull the gun and clutch the trigger. (App. pp. 57-58).

A. The Petitioner failed to prove trial counsel was deficient in failing to call Taquna Blassingame, Rose Wideman, or Raeford Wideman Sr., in support of the Petitioner's defense or that there was a reasonable probability that the result of the proceeding would have been different based upon their speculative testimony about the reason the Applicant fired three shots – accident, self-defense, or defense of his sister where there was no evident threat to him or his sister that required his use of deadly force against them merely because the victim was not listening to his commands, when Petitioner was presenting his weapon.

Petitioner alleged that Trial Counsel was constitutionally ineffective for failing to call Taquna (Taquna¹⁰) Blassingame, Rose Wideman and Raeford Wideman Sr. in support of the Petitioner's "defense of others" or self-defense. In the Petition before this Court, he contends that counsel's alleged failure to interview must fail because disabled counsel Robertson failure to appear and articulate a strategy. Petition, p. 11-13. The record credibly supports that counsel met with Rose and Raeford, aware of their statements to police, as well as

¹⁰ In the trial transcript Blassingame's first name is spelled Taquana rather than Taquna as set out in the allegation. She will be referred to as Blassingame in this section.

the Petitioner's and the witnesses claimed advised them that he was not going to call them based upon their criminal liability from their earlier statements. The record also indicated that Rose did discuss facts about the case with counsel, and she suggested that he pursue a defense other than accident, which was a theory by the defense.

Respondent submits that the PCR Court was correct in concluding that record reflects strategic design by counsel in his decision not to call these three witnesses because of the credibility issues amongst the witnesses and limited probative value in contrast to the statements that had been presented in court. See Jackson, supra. App.p. 670-671. The record reflects Trial Counsel explained to Rose and Raeford Wideman Sr. they would get in trouble for testifying as they were initially not truthful to law enforcement about Petitioner being the shooter. Further, Blassingame was unconscious for the entirety of the altercation and therefore Petitioner cannot show any deficiency by Trial Counsel's decision not to call her as a witness. Under Strickland, the PCR Court reasonably inferred from the record what the strategy was, even if trial counsel cannot articulate it due to his medical issues. See Wood, supra. This PCR Court reasonably found that Petitioner presented no persuasive evidence that had Trial Counsel calling any of these three identified witnesses, there is a reasonable probability that the outcome of the Petitioner's trial would have been different. It is not disputed that Petitioner shot the victim. It is not disputed that the victim was driving the Petitioner's sister's car which was owned by his father. It is not disputed that Blassingame was incoherent in the back seat of the vehicle.

What was disputed was the intent on the part of the Petitioner when he fired multiple shots into the vehicle. However, neither father, mother nor Taquna has any credible evidence about that other than their own speculation or from Petitioner's evolving self-serving statements which would not be admissible at trial as a self-serving hearsay statement. *State v. Sweet*, 270 S.C. 97, 100, 240 S.E.2d 648, 649 (1978), citing *State v. Atchison*, S.C., 235 S.E.2d 294, that "... a defendant cannot introduce in his defense his own statements made to others." Respondent submits that the PCR Court reasonably found that Petitioner failed to present any probative evidence that he was prejudiced by the decision of Trial Counsel to not call these witnesses and had met his burden to show a reasonable probability that the result of the proceeding would have been different.

The PCR Court recognized that counsel's performance is not deficient if counsel decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that

could have made a difference at trial. App.p. 662-663. See e.g. Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi). A witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions, even if that witness is a co-defendant. Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011). See Jackson v. State, 329 S.C. 345, 351-52, 495 S.E.2d 768, 771 (1998) (holding counsel had a valid strategic reason for not calling a co-defendant as a witness where the co-defendant's credibility was a concern and the same evidence would be presented through another witness); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (finding counsel's decision to not call witnesses reasonable where their testimony would have been of no value to the case and they made inconsistent statements in the past).

Thew PCR Court further recognized that prejudice will generally be found if the testimony was significant and favorable enough to the Petitioner so that the trial proceedings results may have been different because of the testimony. App.p. 662-663. See e.g., Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

The PCR Court found that Petitioner failed to establish Trial Counsel was deficient or any resulting prejudice from Trial Counsel's performance.

Taquana Blassingame

The Petitioner contends that counsel should have called Blassingame. But failed to articulate how the

evidence would be relevant to his defense when she was unconscious and did not recall anything about the incident. Counsel Robertson had that knowledge of her condition which was evident throughout the trial. Petitioner asserted that her testimony would have been relevant to demonstrate how close to death and serious injury Blassingame was when Petitioner intervened (in support of his defense of others claim), and to impeach the testimony of the state's primary witness, Brianna Ware, regarding Blassingame's relationship with the victim, and 3) demonstrate that she was never interviewed by trial counsel and thus the exclusion of her testimony could not have been strategic. However, none of her testimony was legally relevant to the defense or was uncontested concerning her intoxicated condition at the time.

The record supports the PCR Court's conclusion that the trial record reflects that Blassingame was extremely intoxicated, asleep or unconscious in the back of the car for the entirety of the incident. At the evidentiary hearing Blassingame testified that she only remembers going to the third club that night and nothing after that. The only added information was that she woke up in the hospital eight hours later. PCR p. 105-106. Blassingame testified that she had no idea what happened. During the trial, evidence had been presented that Blassingame was intoxicated, passed out or unconscious in the back seat of the vehicle. App. p. 180-181 (investigative findings in report that it appeared female owner of the vehicle appeared intoxicated and passed out in the back of the vehicle). Evidence was presented that the female in the back seat of the vehicle was taken to the hospital. App.p. 148. The defense on cross-examination of Deputy Stipe developed that in his supplemental report he indicated "I noticed that she was breathing but was unresponsive. I made several attempts to get her to wake up by giving loud verbal commands for her to exit the vehicle but was unsuccessful." App.p. 150, l. 9. Upon defense questioning, Deputy Stipe confirmed that that he was concerned for her safety and called EMS and that he followed the ambulance to the hospital. App.p. 150-151.

The PCR Court found evidence was also presented through Brianna Ware that Ryan Tatum noticed that Taquna was too intoxicated to drive from Greenville to Anderson so Tatum drove. App.p. 264-265, 268. Ware testified that when they got to the house, the Petitioner had come up to her when she got out of the car and asked her who was driving and why his sister was in the back seat passed out. Ware indicated that she told him the driver was Taquna's boyfriend and that she was fine. App.p. 269. On cross-examination of Ware, counsel developed that Ware indicated that Taquna was intoxicated in the back seat sleeping. App.p. 273, l. 6-11. Ware

denied that she was unresponsive in the back seat and stated that if she called her name or something else that she would hear it. App.p. 274-275.

The PCR Court found that the trial record had evidence presented to the jury and specifically through the defense that Blassingame was unresponsive to inquiry by law enforcement at the scene and described as being intoxicated and passed out.

The PCR Court also rejected as not credible that Taquna Blassingame could have testified about her relationship with victim Ryan Tatum which would have impeached Brianna Ware's assertion at trial was that Tatum was her boyfriend and excited about meeting up with him the night of the incident. App.p. 262-263. At the PCR hearing she had the victim's name visibly tattooed across her chest when she appeared in court at this PCR hearing and she acknowledged that she had received Valentine gifts from the victim one month before the incident and was telling everyone. App.p. 589-591, 601-602. PCR Tr.p. 102-103, 114-115. The impact of having the victim's name tattooed on her chest who had died at the hands of her own brother speaks volumes about the existence of a relationship and her credibility before this Court related to her personal relationship with the victim.

The third assertion is not contested that counsel did not speak with Blassingame. PCR Tr.p. 98-99. However, the evidence was that Blassingame did not remember the shooting, car accident, or any gunshots because she claimed to be unconscious at that time. App.p. 597-598. PCR Tr.p. 110-111.

The PCR Court reasonably found that counsel was not deficient in failing to present her at trial because reasonable counsel would not have done so under similar circumstance. First, counsel, based upon the information had no duty to investigate or interview her because the information he had from the law enforcement records and his own client revealed that she was passed out or unconscious at the time of the incident and therefore would not have relevant evidence concerning the incident. Further, even if counsel had interviewed her, there was no basis to call her that would have aided in their defense, other than to confirm that she never told her brother about the victim who had given her a Valentine's Day gift, even though she testified she told "everybody." The evidence presented at the hearing conclusively showed she had no relevant evidence to present as to whether it was accident, self-defense or defense of others by the Petitioner because she lacked knowledge of any relevant evidence due to her incapacity at the time of the incident. *The Petitioner claims that counsel's*

alleged decision to not interview or call the sister as a defense witness could not be strategic.

This PCR Court reasonably found that finds that whether or not it was “strategic” is not a relevant issue or question because in fact the decision to not do that was knowing because of what he already knew about the sister’s incapacity at the time of the event based upon the entire record and was not deficient. The evidence in the record supports this. App.p. 665-667. *Strickland v. Washington*, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984) (The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions.)

Respondent submits that the PCR Court reasonably applied *Strickland* in finding that counsel had information as cited above from the Supplemental Report that counsel used at trial that Blassingame was unresponsive when law enforcement arrived and it was apparent that she was intoxicated to build his defense case during the State’s case in chief.¹¹ Counsel was also aware, as reflected in the Petitioner’s testimony during the Castle Doctrine hearing, that *Petitioner’s sister was passed out in the back seat prior to the shooting that he developed in the pretrial proceeding.*

The Petitioner has also failed to prove Sixth Amendment prejudice as it related to Blassingame. The Petitioner has failed to show on the basis of this record a reasonable probability that the result would have been different had counsel presented Blassingame to testify at the trial. The jury was aware through the examination of the witnesses by the defense that Blassingame was incapacitated when the incident occurred or asleep in the back seat of the vehicle. Her additional testimony would not have presented any relevant fact about the incident except to show the Petitioner did not know Ryan Tatum. App.p. 269-270. Although there was a dispute about whether Tatum was her secret boyfriend, this fact was not a relevant fact concerning the incident because it was not questioned that the victim was driving Blassingame’s car and that she was in the back seat. Whether they were just friends for 5 months or a boyfriend/girlfriend was not a critical fact where it was undisputed that the Petitioner did not know who Tatum was prior to the shooting. There is no reasonable probability that this information would result in a favorable not guilty verdict based upon a defense of others’ theory.

Rose Wideman

¹¹ This also preserved in 2017 the defense counsel’s right to make the final closing argument. See State v. Beaty, 423 S.C. 26, 37, 813 S.E.2d 502, 507 (2018).

Respondent submits that as to the failure to call Rose Wideman, the record reflects that Rose initially lied to the police about who committed the shooting. At the evidentiary hearing, Rose claimed on direct examination that Trial Counsel did not give her any strategic reason for not wanting her to testify. However, Rose also testified that Trial Counsel specifically told her that he explained how he was going to present the defense of accident and get the matter dismissed as it was accident, but Rose claimed that she thought it would be a better defense based upon a defense of his sister because she was knocked out. This was not consistent with the statements that Petitioner had previously made to law enforcement that counsel had and was introduced at trial. She claimed counsel Robinson told her that if she was a witness she would be charged with lying to the police about who the actual shooter was. This Court must find implicit in this evidence is that Rose's credibility would be challenged by the State based upon the dramatically inconsistent statements. As important, her testimony conflicted with both Brianna's and McDonald's testimony about who was present when the gun was fired.¹² [It should be noted that Brianna testified that after the incident she ran up to the house after the incident to get Petitioner's mother who was asking what was going on. App.p. 71, 272.] Counsel's advice reflected questionable gain by their own speculation on why Petitioner fired the weapon. There was no question that Blassingame was passed out intoxicated in the back seat of the vehicle or that Petitioner fired the weapon. There is also no question that neither the mother or father knew why Wideman shot and whether it was accident or self-defense. This was a reasonable strategic decision where the Petitioner's self-serving statements had already been introduced by the State.

However, even if deficient, the proffered testimony of Rose fails to articulate evidence to show the intent of Petitioner when he fired three shots at Tatum who was not threatening him by attempting to drive away nor reveal evidence to support accident. The evidence suggested only post hoc assessment. The evidence from the Petitioner's own statements clearly presented possible defense of accident and possibly self-defense without putting the Petitioner through impeachment with the various and evolving positions which would only be added to by questionable and inconsistent testimony or irrelevant from his mother and father. There is no reasonable

¹² There was no mention of his mother being present by the car in the introduced statement. State Exhibit 7. In the *in camera* testimony, Petitioner testified about his father being outside and coming to the car, but not his mother. App.p. 47, 50 – 52.

probability that this information would result in a favorable not guilty verdict based upon a defense of others' theory.

Raeferd Wideman Sr.

Third, as to a failure to call his father, on cross-examination, Raeferd Wideman Sr. testified that the night of the incident, he didn't know who was shooting, that it was not a clear night, and that he never saw a gun. The Petitioner's father testified that he never got close enough to the vehicle to even touch a window but was a couple feet away. The Petitioner's father testified Trial Counsel told him that he would get in trouble for testifying. Again, counsel's decision not to call Petitioner's father is similar to the decision not to call Rose. The benefits of the testimony were slight since the issues were presented without impeachment by the family of their own inconsistent statements to law enforcement.

Since the father was not aware who shot and did not see a gun on the victim's presence, it is difficult to see how any of his testimony is relevant to either a defense of self defense or accident. Not only did he not see a gun on the victim, but he was also unaware that his son had a gun or was even a shooter at the time. The PCR Court and this Court can reasonably conclude that had his testimony been presented at trial Petitioner failed to prove a reasonable probability that the result of the proceeding would have been different.

CONCLUSION

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

Respectfully submitted,

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