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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Lexington County
The Honorable J. Mark Hayes, Circuit Court Judge

Opinion No. 2021-UP-099 (S.C. Ct. App. filed March 31, 2021)
Lower Court Case No. 13-CP-32-0614

BOYD RASHAEEN EVANS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2016-001287

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTIONS PRESENTED

I. Did the Court of Appeals violate the standard of review by failing to defer to the PCR court's findings of fact and substituting its own view of the facts in denying Petitioner relief from his convictions and sentences?

II. Did trial counsel's deficient performance in derogation of the Sixth and Fourteenth Amendments to the United States Constitution prejudice Petitioner where trial counsel failed to ask the alibi witness the critical question to establish an alibi – the time with which the alibi witness was with Petitioner on the date in question?

RESPONDENT'S COUNTER PRESENTATION OF QUESTIONS PRESENTED

I. Was the Court of Appeals acting within its standard of review in finding that, under *Bannister v. State*, Petitioner cannot establish prejudice in the absence of actual evidence from Cherise Evans as to the time she was picked up from work?

II. Did the Court of Appeals properly conclude that there is evidence within the record supporting the PCR court's finding of a lack of prejudice from counsel's failure to further question Cherise Evans as to the time of day she claims she was picked up from work by Petitioner?

STATEMENT OF THE CASE

On November 26, 2007, a Lexington County Grand Jury returned indictments against Boyd Rashaeen Evans (hereinafter "Petitioner") for armed robbery, possession of a firearm during a crime of violence, two counts of kidnapping, and possession of a pistol by a person under twenty-one. (PCR App. pp. 729-736). The charge of underage possession of a pistol was *nolle prossed.* (PCR App. p. 616, lines 8-16).

On January 11 through January 14, 2010, Petitioner was tried jointly with Lywone Capers before the Honorable Judge Knox McMahon. Petitioner was represented by private counsel David Miller and the State was represented by assistant attorney generals Robert Maldonado and Joshua Underwood. (PCR App. p. 1). During trial one count of kidnapping was dismissed by directed verdict for each defendant. (PCR App. p. 459, lines 15-24). At the conclusion of the trial, the jury returned a verdict of guilty against Petitioner for the remaining charges of armed robbery, possession of a firearm during a crime of violence, and for one count of kidnapping. (PCR App. p. 615, lines 8-16). Judge McMahon sentenced Petitioner to twenty-one years for armed robbery, twenty-one years for kidnapping, and five years for possession of a fire arm during a violent crime, all to be served concurrently. (PCR App. p. 623, lines 1-17).

Petitioner appealed his conviction. Ms. Katherine Hudgins filed an *Anders* brief on Petitioner's behalf on June 14, 2011. (PCR App. p. 625). Petitioner raised the single issue:

> Did the trial judge err in refusing to allow cross-examination of a witness in regard to conditions and medications that may have affected her memory when the witness testified that appellant, her brother, visited her from North Carolina the afternoon before the robbery, placing appellant in the vicinity of the robbery, when identity was a key issue at trial?

(PCR App. p. 628). The Court of Appeals subsequently dismissed the *Anders* appeal on May 16, 2012. (PCR App. p. 638).

Petitioner then sought post-conviction relief ("PCR") by application filed February 20, 2013. (PCR App. p. 640). The State responded with its filed Return on April 28, 2015. (PCR App. p. 647) On September 28, 2015, counsel for Petitioner, Kristy G. Goldberg, filed an Amended Application for PCR. (PCR App. p. 653). An evidentiary hearing was held before the Honorable J. Mark Hayes, wherein testimony was provided by Petitioner, alleged alibi witness Yacia Montgomery, and trial counsel David Miller. (PCR App. pp. 655-656). Alleged alibi witness, Cherise Evans, did not appear to offer testimony and was not subpoenaed to do so by PCR counsel. Judge Hayes took the matter under advisement, and later issued an Order of Dismissal on May 25, 2016. (PCR App. p. 719).

Petitioner filed a notice of appeal and perfected his PCR appeal by filing a Petition for Writ of Certiorari with this Court on January 20, 2017. Petitioner sought certiorari for two questions:

I. Whether the PCR court erred in finding that Petitioner was not prejudiced by trial counsel's deficient examination of Cherise Evans regarding Petitioner's alibi defense?

II. Whether the PCR court erred in finding that trial counsel rendered effective assistance where he failed to locate and call Yacia Montgomery as an additional alibi witness to testify in Petitioner's defense at trial?

Pursuant to Rule 243(l), this Court transferred the appeal to the Court of Appeals on October 30, 2017. The South Carolina Court of Appeals denied certiorari as to question two, granted certiorari as to question one, and ordered briefing from the parties by Order dated September 24, 2018. Petitioner filed his Brief of Petitioner on October 16, 2018, and Respondent filed its Brief of Respondent on February 19, 2019. The Court of Appeals considered the matter and issued an

unpublished per curium opinion affirming the PCR court's denial of relief on March 31, 2021. (Supp. App. p. 1); *Evans v. State*, No. 2016-001287, 2021 WL 1227794 (S.C. Ct. App. Mar. 31, 2021). Petitioner filed a Petition for Rehearing on April 15, 2021. The South Carolina Court of Appeals denied the Petition for Rehearing on June 25, 2021.

STATEMENT OF FACTS

On July 26, 2007, at approximately 12:30am, four African-American individuals robbed the Pitt Stop located at 125 Rolling Meadows Lane. Video surveillance footage of the robbery was captured by Pitt Stop security cameras. (Exhibit S-52). This video shows the four individuals performing the armed robbery with partially covered faces and fleeing in a blue Ford Explorer with gold trim. This video also shows the left shoulder of one of the perpetrators, wherein a large scar is visible. (PCR App. p. 118, line 17 through p. 119, line 2). Still photographs were taken from this video which provided photographic evidence of the scar and the getaway vehicle (State's Exhibits 1-33).

Following the robbery the police investigated and sought the arrests of Lywone Capers and Petitioner as two of four suspects to the crime. The two individuals were extradited, charged, and jointly tried. The pertinent witnesses at Petitioner's trial testified as follows:

Witness Michael Rhaney

Michael Rhaney testified that he lives in a mobile park home called Rolling Meadows with his fiancé, Glynnessa Evans. The home is approximately one mile from the scene of the crime, the Pitt Stop gas station where Mr. Rhaney worked. (PCR App. p. 254, lines 18-20; p. 258, lines 3-9; pp. 255-256). Mr. Rhaney testified that on July 25th, while on his way to work he saw Petitioner driving a blue Ford Explorer that had "tan over the wheel rail". He recalled the incident because

Petitioner almost hit him by running a stop sign. (PCR App. p. 261, lines 1-24). Mr. Rhaney also saw the vehicle at his home during Petitioner's visit; he was able to recall the North Carolina state tags and remembered the tag number of "WPD 2995" for the vehicle. (PCR App. p. 289, lines 12-14; p. 274, lines 1-2; p. 15-22). Mr. Rhaney, upon examination of State's Exhibits 1-8 (still photographs taken of the getaway car used at the robbery), confirmed that it was the same vehicle he witnessed earlier that afternoon. (PCR App. p. 262, lines 5-11; p. 263, lines 17-19). Upon examination of State's Exhibits 9-33, Mr. Rhaney confirmed that he recognized Petitioner in the robbery photographs by his skin tone, build, and the matching clothing worn by Petitioner that day. (PCR App. p. 258, lines 17-25; p. 260; p. 264, line 9 through p. 265, line 7).

Witness Rosa Lugo

Ms. Rosa Lugo testified that she was manager of the Rolling Meadows mobile home park. She testified that Petitioner lived in Rolling Meadows in July 2005. (PCR App. p. 295, lines 1-7). She recalled that on July 25, 2007, she had an incident requiring her to respond to loud music from individuals in a Ford Explorer SUV (which she described as black), and she made the individuals leave. (PCR App. p. 296, lines 15-22; p. 297, lines 10-11). After this incident she testified that the same Ford Explorer nearly ran into her as it was leaving, which prompted her to take down the license plate number. (PCR App. p. 297, lines 13-18). She wrote the license plate number "WU 2895", "Explorer", and "North Carolina" down and provided the note to a Lexington County deputy soon after. (PCR App. p. 298, line 1-22).

Witness Glynnessa Evans

Glynnessa Evans is Petitioner's sister. She testified on behalf of the State. She confirmed that she lives at Rolling Meadows with Michael Rhaney and her kids, and had lived there for 9

years prior. (PCR App. p. 305, lines 19-21; p. 306, lines 16-19). Ms. Glynnessa Evans testified that on July 25, 2007, Petitioner, along with her cousins co-defendant Lywone Capers, Ton and John visited her home unexpectedly. (PCR. App. p. 308, lines 1-21). She testified that the group was driving a blue and gold Ford Explorer. (PCR App. p. 309, lines 10-12). On the day of the group's unexpected visit, Ms. Glynnessa Evans recalled that there was an incident wherein management responded to complaints of loud music. She spoke directly with management about the issue and was informed by management that Petitioner and the others were forced to leave. (PCR App. p. 309 line 23 through p. 310, line 5).

She testified that her brother was wearing a black tank-top that day, and she recognized him and the other individuals from the Pitt Stop surveillance video by their clothing. (PCR App. p. 388, lines 12-16; p. 389, lines 12-16). She also was able to recognize the scar of the perpetrator in the States Exhibits 30-32 as matching Petitioner's scar.[1] (PCR App. p. 322, line 13 through p. 323, line 3). She further recognized Petitioner from the video based on his voice, his build, and his cut. (App., p. 323, line 21 through p. 327, line 1).

Witness Detective Prestigacomo

Detective Prestigacomo testified that during his interview with Pitt Stop employees, Mr. Michael Rhaney requested to speak with him privately. Mr. Rhaney informed him that the robbery had been committed by his fiancé's cousins and initially named co-defendant Capers, Petitioner, and John. (PCR App. p. 402, line 24 through p. 403, line 11). Detective Prestigacomo confirmed

[1] The State also introduce into evidence photographs of Petitioner's scar taken by Detective Prestigacomo. (PCR App. p. 413, lines 2-25; p. 434, lines 6-11); Exhibits 40-50). In addition to the photographic and video evidence, Petitioner Evans' scar was shown in person to the jury. (PCR App. p. 437, line 2-24).

that upon showing Mr. Rhaney the still photo of the vehicle from the robbery, Mr. Rhaney confirmed that it was the vehicle he saw them driving the previous day. (PCR App. p. 404, lines 1-9).

Detective Prestigacomo also testified that upon speaking with Ms. Glynnessa Evans and showing her the photographs "she without hesitation pointed to each one identif [sic] – giving me names, one being Boyd Evans, Lywone Capers, John Sosa, and Ton . . ." (PCR App. p. 406, lines 10-15). He confirmed that Ms. Evans identified the vehicle from the robbery as the Ford Explorer the individuals had driven, which she recalled to have North Carolina tags. (PCR App. p. 406, line 21-25). According to Detective Prestigacomo, Glynnessa Evans identified Petitioner in the video based upon a photo of the perpetrators scar, and recognized the skin tone, build, and clothing of the perpetrators. (PCR App. p. 407, line 3-21). Detective Prestigacomo also confirmed that Ms. Evans described the altercation with the individuals and the "maintenance lady Mrs. Rosa Lugo", and that this information led to the Detective seeking Mrs. Lugo out for further evidence. (PCR App. p. 408, lines 3-9). Upon questioning Mrs. Lugo, Detective Prestigacomo was informed that she saw Petitioner driving the vehicle that almost hit her, and she identified Petitioner when shown a picture of him. (PCR App. p. 409, line 16-25).

Detective Prestigacomo confirmed that Mr. Rhaney provided a tag number that was "off by one digit" and that Mrs. Lugo provided a tag number that had the right numbers, but some incorrect letters. (PCR App. p. 408, lines 1-14). The *provided* tag numbers were not on file with the DMV. (PCR App. p. 449, lines 1-5). However, Detective Prestigacomo used the combined information from the two tags to deduce a North Carolina license plate of a "blue over gold Explorer" registered to Frederick Neal. (App., p. 408, line 1 through p. 409, line 1).

Witness Cherise Evans

Ms. Cherise Evans testified that she worked at Church's Chicken and Serenity Nursing in Charlotte in 2007. (PCR App. p. 534, lines 3-5). She testified that she is Petitioner's sister and lived with him in Charlotte during 2007. (PCR App. p. 533, lines 13-25). At that time she claimed that Petitioner Boyd and her mother would transport her to and from work, but also waivered on whether or not her mom drives at all due to physical limitations. (PCR App. p. 534, lines 8-15; p. 538, lines 18-25).

Ms. Cherise Evans was asked: "Over July 25th, 26th of 2007 being the date of this incident, do you recall whether who, if anyone, picked you up from work?" Ms. Cherise Evans responded: "Yes.", and that her brother, Petitioner, picked her up. (PCR App. p. 534, lines 16-23). She further testified that to her knowledge Petitioner had not left Charlotte over those dates. (PCR App. p. 534, line 24 through p. 535, line 1). Ms. Evans testified that she recalled this specific date because she had family birthdays that week and was off work on July 23rd and July 24th, but had to return to work on July 25th. (PCR App. pp. 539, lines 1-6).

PCR Evidentiary Hearing

During the PCR hearing, Cherise Evans was expected to appear and testify. However, she failed to appear to the hearing for her own brother, and Petitioner's attorney had not subpoenaed her to testify. (PCR App. p. 660, lines 3-4; p. 659, lines 15-22). The PCR Judge proceeded with the evidentiary hearing and declined to hold the record open and consider Ms. Cherise Evans' testimony at a later date. (PCR App. p. 716, line 19 through p. 717, line 4).

Petitioner testified and indicated that he dropped his sister Cherise off at work at 9am on the July 25, 2007, and picked her up at midnight that night. (PCR App. p. 669, lines 20-25; p. 671,

line 14 through p. 672, line 10). He also testified that he remained in the Charlotte area that entire day and spent the evening at home with friends and family. (PCR App. p. 673, lines 22-23).

Trial Counsel David Miller testified at the evidentiary hearing and testified that Petitioner's explanation to him was that he was in Charlotte the entire day – not just at the precise time of the crime. While Cherise testified that Petitioner, to her knowledge, had not left Charlotte, Mr. Miller could not find any witnesses who could corroborate Petitioner's assertion *that he remained in Charlotte the entire day*. (PCR App., p. 692, line 21 through p. 693, line 11). Mr. Miller agreed that Ms. Cherise Evans was called as an alibi witness, and that she testified Petitioner took her to work and picked her up. However, he could not be certain as to when that occurred. (PCR App. p. 696, lines 1-20; p. 702, lines 14-25; p. 705, lines 10-17; p. 706, lines 13-21).

Mr. Miller conceded that he did not ask her what time she was picked up from work; he instead relied upon her testimony that, to her knowledge, Petitioner had not left Charlotte that day. (PCR App. p. 707, lines 16-20). In review and recitation of his notes he indicated that he has a note stating "Cherise, Church's Chicken, 21st through 28th till close, Boyd picked up at one". This note was the product of an interview Mr. Miller conducted *with Petitioner*. (PCR App. p. 709, lines 3-6). Mr. Miller testified that he hired an investigator to track down all of the witnesses named by Petitioner, but had difficulty finding them despite substantial effort. (PCR App. p. 692, lines 14-16; p. 695, line 22 through p. 696, line 20).

STANDARD OF REVIEW

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. The South Carolina Appellate Court Rules set forth a nonexclusive list of the circumstances in which review

may be granted. Therein, Rule 242(b) continues: "[t]he following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court." Rule 242(b), SCACR.

The standard of review in PCR cases is dependent upon the specific issue presented. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). An appellate court "defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them." *Id.* Questions of law are reviewed *de novo*, with no deference to the trial court. *Id.* In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. *Butler v. State,* 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

I. The Court of Appeals did not violate its standard of review for a PCR appeal. There is no evidence within the record from Cherise Evans supporting the supposed 1AM pick-up note, and as a matter of law, Petitioner cannot satisfy his burden of proof for prejudice under *Bannister* and *Glover*.

The Petition for Writ of Certiorari should be denied as the consequence of Petitioner's failure to introduce the testimony of his alleged favorable alibi witness, Ms. Cherise Evans. The

Court of Appeals accurately concluded that the evidence presented was from Petitioner, and merely speculative as to what Ms. Evans might have testified to. As such, *Bannister* and *Glover* control, and Petitioner, as a matter of law, cannot demonstrate prejudice.

"An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Wiggins v. Smith,* 539 U.S. 510, 521, 123 S.Ct. 2527 (2003) (citing *Strickland v. Washington*, 466 U.S. 668, 673, 104 S.Ct. 2052 (1984)). As to the second prong, the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice with the witness' failure to testify at trial." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing *Pauling v. State,* 331 S.C. 606, 503 S.E.2d 468 (1998)). The Court in *Bannister* made a definitive determination that the absence of the witness's testimony either in person or otherwise admitted pursuant to the rules of evidence is fatal to an ineffective assistance of counsel claim. *Bannister*, 333 S.C. at 303, 509 S.E.2d at 809-10. The absence of such testimony, such that only *speculation* can be made as to precisely what a witness would have said, precludes the establishment of prejudice, as a matter of law. *Bannister*, 333 S.C. at 303, 509 S.E.2d at 809 (citing *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995)). A PCR court's *findings of fact* are entitled to deference, but only when there is evidence within the record to support them. The application of law is conducted via *de novo* review. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018).

The PCR court took the note in question at face value, and either failed to hear or failed to consider the testimony of how the note was created. In doing so, it concluded that "Applicant

offered evidence that Ms. Evans would have said Applicant was picking her up from work at roughly the same time the armed robbery occurred." The PCR court thereby concluded that counsel was deficient for not questioning Cherise Evans further on when she was picked up from work. Relevant to the Petitioner's first argument, the Court of Appeals noted that the issue before it was not whether counsel was deficient, but whether Petitioner satisfied his burden to demonstrate prejudice and present actual evidence of the witness in question so as render the content of Cherise Evans' further desired testimony more than mere speculation. In addressing this question the Court of Appeals reached one factual finding that did not give deference to the PCR court. Therein, the court stated:

> Trial counsel's notes from an interview with Petitioner indicate Petitioner picked up [Cherise Evans] from work in Charlotte around 1:00. He inferred that meant 1:00 PM but stated, "She was working at Church's, the 21st through the 28th, until close, so maybe that's one in the morning."
>
> . . .
>
> The only evidence presented at the PCR hearing to provide the substance of [Cherise Evans'] testimony – other than the trial transcript – was Petitioner's own testimony and trial counsel's note, which came from an interview trial counsel had with Petitioner, not [Cherise Evans].

(Supp. App. p. 4-5)

This holding can be construed as the Court of Appeals rightly denying deference to the PCR court for an unfounded factual finding. However, it is also indicative of the Court of Appeals exercising *de novo* application of *Bannister v. State* – a legal precedent that the PCR court failed to consider. In either case, the Court of Appeals exercised is standard of review precisely as instructed.

Petitioner suggests that the Court of Appeal's conclusion was an "erroneous factual finding", but offers no explanation as to why it was erroneous. Nor does Petitioner address the portion of the record where this factual finding is specifically proven. Mr. Miller testified explicitly, "I have a note right here just going back through my notes that were personal *that I made when I interviewed him* that – I have a note Cherise, Church's Chicken, 21st through 28th till close, Boyd picked up at one." (App., p. 709, 3-5)(emphasis added). Cherise Evans is a woman; this note cannot be interpreted as evidence taken from an interview with *her*.

Petitioner wants this Court to assume that Cherise Evans' supposed testimony, which is absent from the record, would have been the same as the speculation set forth in the notes taken from Petitioner's interview. Such a conclusion is contrary to the Supreme Court's holding in *Bannister*. *Id.* at 303, 509 S.E.2d at 809. In addition to presuming Cherise Evans would have testified consistently with the note taken from Petitioner's interview, Petitioner also desires the Court to assume that this note indicates 1AM, as opposed to 1PM. Cherise Evans has provide no evidence to such a conclusion. The only basis for Petitioner's 1AM assumption comes from Petitioner's own PCR testimony, where he testified, *inconsistently with the note,* that he picked up his sister *and arrived back home* "at twelve something. Twelve." (App., p. 672, lines 3-10). Even Cherise Evans' own trial testimony is contradictory to the other portions of the note, as she testified at trial to being off work on the 23rd and 24th of July to celebrate family birthdays. (App., p. 539, lines 1-6).

The Court of Appeals did not violate its standard of review in finding, as a matter of law, that there was no prejudice resulting from counsel's failure to question Cherise Evans further because Petitioner failed to provide evidence from Cherise Evans demonstrating what further

questioning would have revealed. Arguments to the contrary are entirely speculative and cannot support relief. Certiorari should be denied as to Petitioner's first question presented.

II. The Court of Appeals did not err in finding evidence within the record to support the PCR Court's holding that there was a lack of prejudice from counsel's failure to further question Cherise Evans.

Petitioner's two questions presented are intertwined, and necessarily, Petitioner's second question presented is redundantly without merit for certiorari, as the record shows Petitioner's failed to demonstrate prejudice as a matter of law. (*Supra*). However, the surrounding evidence presented at trial also demonstrates that the PCR court, and the Court of Appeals in affirmance, did not err in finding Petitioner failed to satisfy his burden to prove prejudice.

Petitioner contends that had the jury heard testimony from Cherise Evans that Petitioner picked her up from work at approximately the same time the armed robbery took place, a fact not substantiated by the record (*Supra*), there would have been a reasonable probability of differing result at trial. Petitioner is mistaken. Petitioner's supposed alibi would not have been corroborated by any documentation or even by unbiased testimony. It was simply the testimony of his own sister, claiming to be picked up from work at the time in question. Moreover, it is the type of "routine day" testimony that the jury could easily conclude was misremembered by the witness as to the specific date in question. As was found by the PCR court, and affirmed by the Court of Appeals, it is unlikely that such would have created a reasonable probability of differing result in the face of the evidence from the State.

The State presented three separate witness who saw Petitioner a mere ten hours before the crime; one was Petitioner's own sister, the other was his future brother-in-law, and the last was a

property manager who was familiar with Petitioner as a former resident. There respective testimonies are consistent. This already chips away from the credibility of Cherise Evans having no knowledge that Petitioner left Charlotte on July 25th. Additionally, the testimony of Mr. Rhaney, Glynnessa Evans, and Ms. Lugo are corroborated by the fact that all three identified the vehicle in question by description, and both Mr. Rhaney and Ms. Lugo recalled with near perfection the North Carolina license plate to a vehicle that matched the description of the one caught by video surveillance. That is corroborative evidence that cannot be fabricated and is not conditioned upon a witness's supposed motives or bias against Petitioner. Lastly, the testimony of Mr. Rhaney and Glynnessa Evans positively identified Petitioner from the video surveillance, and such evidence also allowed the jury to do so for itself by way of Petitioner's distinctive shoulder scar.

The evidence presented by the State is both strong and mutually corroborative in identifying the Petitioner as the culprit, placing the Petitioner within a mile of the crime scene mere hours beforehand, and in driving a vehicle matching the one videoed by surveillance cameras. As such, there is evidence within the record which supports the PCR court's conclusion that the supposed alibi testimony would not have created a reasonable probability of differing result at trial. Certiorari should therefore be denied.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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