NO. 21-7189

SUPREME COURT OF THE UNITED STATES

ORIGINAL

DEIMEYON ALLEN

PETITIONER

VS.

VANCE LAUGHLIN

WARDEN,

RESPONDENT.

On Petition for a Writ of Certiorari to

The United States Supreme Court

PETITION FOR WRIT OF CERTIORARI

DEIMEYON ALLEN

GDC# 1000420167

Wheeler Correctional Facility

195 Broad St.

Alamo, Ga. 30411

I QUESTIONS PRESENTED

1) Is the Petitioner afforded due process when filing his Application For Certificate Of Probable Cause?

2) Is the Georgia Supreme Court required to ensure that the Petitioner is treated fairly in accordance with due process an correct it's error when the error is brought to the Court's attention?

3) Is the Petitioner entitled to effective assistance of counsel on appeal?

4) Is the Petitioner entitled to have a critical witness subpoenaed on behalf of the defense by the trial counsel?

5) Does the Petitioner have a constitutional right to be present at any critical stage of the proceeding?

6) Is the Petitioner entitled to effective assistance of counsel during trial?

7) Is the Petitioner entitled to have the trial conduct a investigation into the matters of the case (911 Call) prior to trial?

8) Is the Petitioner trial counsel required to thoroughly examine witnesses during trial?

9) Is the Petitioner entitled to have only admissible relevant evidence admitted during the trial proceedings?

10) Is the Petitioner's trial counsel required to timely object to prejudicial evidence?

11) Is the reviewing Court required to consider all of the trial counsel's deficiencies when weighing prejudice?

12) Is the Habeas Corpus Judge required to rule on each individual ground that the Petitioner properly raised in the evidentiary hearing and briefs submitted to the Courts?

II. Table of Contents

The Petitioner has been denied the right to effective assistance of counsel and due process of law. The Superior Court Of Wheeler County's Judge ruling is contrary to the facts presented in evidence during the evidentiary hearing and contrary to clearly established federal law according to **Strickland v. Washington**. The Court further failed to rule on Ground Eleven raised by the Petitioner.

To avoid erroneous deprivations of the right to due process of law this Court should clarify that the Georgia Supreme Court is required to view the Petitioner's Application For Certificate Of Probable Cause when the Petitioner has demonstrated that he complied with the appropriate filing procedures and mailed a timely Notice Of Appeal with Superior Court Of Wheeler County giving them notice of his intention to file an Application For Certificate Of Probable Cause. The Petitioner filed a timely Motion For Reconsideration enclosing a copy of the Superior Court Of Wheeler County's Clerk docket sheet which acknowledged that the Petitioner timely filled the Notice Of Appeal. The Motion For Reconsideration should have been granted. The failure to view the Petitioner's Application For Certificate Of Probable Cause violated the Petitioner's right to due process of law. Due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly. Due process applies to both civil and criminal matters. See **Evitts v. Lucey 469 U. S. 400-401 (1985)**. (When a State opts to act in a field where its action has significant discretionary elements, such as where it establishes a system of appeals as of right although not required to do so, it must nonetheless act in accord with the dictates of the Constitution, and, in particular, in accord with the Due Process Clause.)

III TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL PROVISIONS UNITED STATES CONSTITUTION:

IV. Petition for Writ Of Certiorari

Deimeyon Allen an inmate currently incarcerated at Wheeler Correctional Facility in Alamo, Georgia, Pro Se, respectfully petitions this court for a writ of certiorari to review the judgment of the Georgia Supreme Court and the ruling of the Superior Court denying the Petitioner's Writ Of Habeas Corpus.

IV. OPINIONS BELOW

APPENDIX: A

MOTION FOR NEW TRIAL

Decided:

DENIED

APPENDIX C

DIRECT APPEAL

Supreme Court of Georgia.

ALLEN v. The STATE.

No. S14A1884.

Decided: March 16, 2015

APPENDIX E

DENIAL OF HABEAS CORPUS RELIEF

Decided: April 12, 2021

DENIED

APPENDIX: J

APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE

DISMISSED

Georgia Supreme Court Decision

Supreme Court Of Georgia September 21, 2021

Case No. S21H1149

APPENDIX: M

MOTION FOR RECONSIDERATION

SUPREME COURT OF GEORGIA DECISION

Case No. S21H1149 October 19, 2021

The Honorable Supreme Court met pursuant to adjournment;

The following order was passed.

DEIMEYON V. VANCE LAUGHLIN, WARDEN.

The motion for reconsideration having been filed late, it is hereby dismissed as untimely. Supreme Court Rule 27.

All the Justices concur.

APPENDIX: O

STAY OF REMITTITUR

DENIED

SUPREME COURT OF GEORGIA DECISION

Case No. S21H1149 October 19, 2021

The Honorable Supreme Court met pursuant to adjournment;

The following order was passed.

DEIMEYON ALLEN V. VANCE LAUGHLIN, WARDEN

Upon consideration of the Motion to Stay Remmitur filed in this case, it ordered that it be hereby denied.

All the Justices concur.

V. JURISDICTION

Mr. Allen's Application For Certificate Of Probable Cause was dismissed on September 21, 2021, and the Motion For Reconsideration was denied on October 19, 2021. The Motion to Stay Remmitur was denied on October 19, 2021, and Mr. Allen invokes this Court's jurisdiction under **28 U.S.C. § 1257 (a)**, having timely filed this petition for a writ of certiorari within ninety days of the Georgia Supreme Court's judgment.

VI. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall

have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution Amendment XIV Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VII. STATEMENT OF THE CASE

Petitioner filed his original Application for Writ Of Habeas Corpus on April 18, 2016 challenging the validity of his Fulton County jury trial conviction. The case was transferred to the Wheeler County Superior Court on November 26, 2018. An evidentiary hearing was held on April, 2019 and concluded on October 8,2019. The Court denied the Petitioner relief on April 12th, 2021. The petitioner filed a timely Application For Certificate Of Probable Cause on the September 21, 2021 with the Georgia Supreme Court and a timely notice of a with the Wheeler County Superior Court on the. The Georgia Supreme Court denied the Petitioner's Application For Certificate Of Probable Cause. The petitioner filed a motion for reconsideration on the October 19, 2021 The Georgia Supreme Court denied the Motion for reconsideration on October 19,

2021 The petitioner filed his intent to seek certiorari with the Georgia Supreme Court clerk.

VIII: REASONS FOR GRANTING THE WRIT

(1) The Georgia Supreme Court erroneously dismissed the Petitioner Application For Certificate Of Probable Cause subsequently denying the Petitioner the right to due process of law.

To avoid erroneous deprivations of the right to due process of law this Court should clarify that the Georgia Supreme Court is required to view the Petitioner's Application For Certificate Of Probable Cause when the Petitioner has demonstrated that he complied with the appropriate filing procedures and mailed a timely Notice Of Appeal with Superior Court Of Wheeler County giving them notice of his intention to file an Application For Certificate Of Probable Cause. The Petitioner filed a timely Motion For Reconsideration enclosing a copy of the Superior Court Of Wheeler County's Clerk docket sheet which acknowledged that the Petitioner timely filled the Notice Of Appeal. The Motion For Reconsideration should have been granted. The failure to view the Petitioner's Application For Certificate Of Probable Cause violated the Petitioner's right to due process of law. Due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly. Due process applies to both civil and criminal matters. See **Evitts v. Lucey 469 U. S. 400-401 (1985)**. (When a State opts to act in a field where its action has significant discretionary elements, such as where it establishes a system of appeals as of right although not required to do so, it must nonetheless act in accord with the dictates of the Constitution, and, in particular, in accord with the Due Process Clause.)

(2) Petitioner established by a preponderance of the evidence that the appellate counsel was ineffective for failing to interview and subpoena a critical witness on behalf of the defense that subsequently violated the petitioner's rights under both the sixth and fourteenth amendments.

Miranda Robinson was an eyewitness to the shooting incident that voluntarily provided the investigating officers of the East Point Police Department with a statement. See (Exhibit P 2.) Ms. Robinson's statement corroborated with the defense theory that the victim was the aggressor, and was in possession of a weapon and was following , threatening and brandishing a weapon in the direction of the petitioner. During the motion for a new trial the appellate counsel had initially raised this claim but abandoned the issue on appeal.

Appellant counsel was aware that Miranda Robinson was living in South Carolina and failed to present the witness or an affidavit from the witness to demonstrate to the court that the witness was available and willing to testify.

After raising this issue on appeal the appellant counsel abandoned this claim of ineffective assistance of counsel on direct appeal and during the second hearing of the motion for new trial. It is obvious, after a review of the record that the appellant counsel omitted a significant and obvious issue while pursuing issues that were clearly and significantly weaker.

See (MFNT tr. pp. 7-8) During the habeas evidentiary hearing, Monique Walker, the trial counsel, provided that she did not recall the defense having witnesses (HT pg 44: 3-13) Ms. Walker stated she did an independent search for witnesses but

didn't recall whether she interviewed or subpoenaed Ms. Robinson prior to trial. (HT pg. 46:20-24) Walker also failed to provide the petitioner and appellate counsel with investigation requests that were requested per subpoena. (MFNTtr. p. 43-48) Appellant counsel did not follow up on the investigative requests and these documents were not a part of the petitioner's case record. Ms. Robinson's testimony contradicted the states theory that the petitioner was the aggressor and shot an unarmed victim See (HT P2p. 86-88A) Counsels deficient performance for failure to call Robinson, a witness that was helpful to the defense is equivalent to failing to call a Key witness. See ***Blouin v. State 255 Ga. App 788 (2002)*** (The appellate court found the attorney's failure was equivalent of simply forgetting to call a key witness.)

The Habeas Judge held that "Miranda Robinson gave a statement to the East Point Police Department regarding the events surrounding the shooting involving Petitioner. (HT86-88) To prepare for trial, counsel employed an investigator in reviewing the crime scene and following up on the evidence. (HT41) Trial counsel recalled attempting to locate witnesses, reviewing the discovery information and visiting the crime scene. (HT42-43) Counsel testified that she attempted to locate favorable witnesses by canvassing the area of the crime scene, running searches using addresses or social security numbers, and running criminal history background on all known witnesses. (HT47) However, counsel could not recall if Ms. Robinson could be located to testify regarding her statement in the police report. (HT54) According to Ms. Walker, had she been able to locate Mrs. Robinson, she would have called her to testify. (HT54)Petitioner has failed to show that Miranda Robinson could be located to testify. The available testimony indicates that trial counsel investigated the case and attempted to locate favorable witnesses such as Mrs. Robinson."

The Court's ruling is contrary to the evidence presented by the Petitioner. The petitioner has made an affirmative showing that specifically demonstrates how counsel's failure affected the outcome of his case. Robinson's statement was favorable and material to the petitioner's case. The petitioner has identified the witness that provided a statement voluntarily to the East Point Police Department. The statement contradicts the states theory that the petitioner was the aggressor and shot an unarmed victim. Respondent alleges that the petitioner must demonstrate that the witness has agreed to testify. However, had this witness been subpoenaed to trial, the petitioner would have had the right to request that the trial court to compel the witness to testify under the right to compulsory process. See **VI Amendment of U.S. Const**. To require an indigent prisoner that lacks resources to now locate a witness that provided her social security number, address, and phone number would deny the petitioner his right to present a defense compel a witness to testify, access to the courts, a fair trial and due process of law. **VI & XIV Amends U.S. Constitution**. The petitioner has carried his evidentiary burden with respect to ground one. There is a reasonable probability that the outcome of the appeal would have been different had the appellant counsel not abandoned and omitted this issue on appeal. See ***Shorter v. Waters 275 Ga. 581 (2002)***.

(3) The petitioner established by a preponderance of the evidence that the appellate counsel was ineffective for failing to raise that the trial counsel was ineffective for failing to argue during closing that the jury should also consider whether the defendant's acts satisfy the elements of voluntary manslaughter.

Ms. Walker: Your Honor, Before you bring them out, in light of the court's decision to not give the request on involuntary manslaughter , The defense is requesting a request on voluntary manslaughter. See (HT1300; 8- 11) The trial court also commented on the evidence, during the charge conference. "Well Ms. Walker, I wish you had taken me up on my offer earlier about voluntary manslaughter. I know it was during closing that I instructed each of you that involuntary manslaughter would not be charged. However, Ms. McCamy, I think the facts coupled with the request warrant the charge. I think the jury could find, based upon the evidence, that he was excited, went in there, got the gun, and came out in the heat of passion and discharged the gun, and I think the jury would be authorized to find him guilty of voluntary manslaughter." See (HT 1300 Line 25-1301 line 1-9) The district attorney argued that the charge should not be given and the trial court responded: "I understand that, but the bottom line is that I think the facts warrant it. As I told you. I would charge if you decided to request it. Perhaps I should have told you based upon the facts I'm going to charge it. But I'll give you a moment to argue why you think it's not voluntary manslaughter if you would like to do that. "See (HT 1302) An additional closing argument was given in which the trial counsel advised the jury not to consider the lesser included charge of voluntary manslaughter. No competent attorney in the same situation would have informed the jury to disregard a charge on a lesser included after arguing with the state during a lengthy colloquy that the evidence requires a charge on the lesser included.

The Habeas Judge held that the "Trial counsel testified that she developed and pursued a justification theory of defense which she introduced to the jury during opening statements. (HT42, 1283-1029). In closing arguments, trial counsel argued for self defense and a full acquittal. (HT1283-1293) While counsel did not argue

for the jury to return a verdict of voluntary manslaughter as a lesser included offense, counsel did request that charge be given to the jury for consideration and the trial counsel agreed to so charge the jury. (HT1300-1302) Trial counsel then had another opportunity to address the jury regarding voluntary manslaughter in which she explained the nature of a lesser included offense but reiterated that self-defense is an absolute defense to voluntary manslaughter as well. (HT1303). Therefore the record shows that while counsel argued for a full acquittal on the basis of self-defense, counsel still presented the option of a lesser-included offense to the jury for consideration.

The Court views counsel's decision based on the circumstances in which it was made and not through the distorting lens of hindsight. So viewed, counsel's strategy was reasonable and warranted by the evidence. Petitioner has therefore failed to show that appellate counsel acted reasonably in not raising this issue on appeal as Petitioner did not establish that trial counsel rendered ineffective assistance of counsel or that this ground had a reasonable likelihood of success on appeal."

The Respondent and the Habeas Court takes the position that the trial counsel was pursuing an all or nothing defense. See ***Blackwell v. State 302 Ga 820 (2018)*** (Blackwell asserts that his trial counsel rendered ineffective assistance by pursuing an all or nothing strategy and waiving a jury charge on voluntary as a lesser included without consulting Blackwell.) The decision not to request a jury charge on a lesser included offense in order to pursue an all-or-nothing defense is a matter of trial strategy. See ***Wells v. State 295 Ga 161, 162 (2) (b) (2014)***.

The Court's ruling is contrary to the evidence presented by the Petitioner. The trial counsel specifically requested a charge on voluntary manslaughter after the trial court convinced counsel that the charge was warranted after hearing the evidence presented, however the trial counsel specifically instructed the jury not to consider the lesser included charge of voluntary manslaughter.. "An attorney's decision about which defense is a question of a trial strategy. " ***Hendrix v. State 298 Ga. 60 (2015)*** The pursuit of an all or nothing defense strategy is permissible. ***Wells v. State 295 Ga. 161 (2014)*** However in the instant case the trial counsel's decision to argue for justification as an absolute defense while still presenting the option of a lesser-included charge demonstrates that the counsel was not pursuing an all or nothing defense. See ***Blackwell v. State 302 Ga. 820 (2018)*** (Counsel's decision to argue for justification as an absolute defense while still presenting the option of a lesser-included charge to the jury was reasonable and the evidence adduced at trial supported this decision.) The petitioner has shown that counsel's performance was deficient and that the deficient performance so prejudiced the petitioner and there is a reasonable likelihood that, but for counsel's unprofessional error, the jury would have returned a verdict of guilty of voluntary manslaughter. See ***Hutto v. State 320 Ga App 235 (2013)*** Counsel's actions or inactions prejudiced the petitioner, the jury was considering the charge of voluntary manslaughter during deliberations and this is evident because there was a discrepancy whether the petitioner had been found guilty of voluntary manslaughter. See (HT 1358) Trial counsel's decision to forego requesting the jury to consider voluntary manslaughter was a patently unreasonable choice only an incompetent counsel would have chosen. The underlying ineffective assistance of counsel claims have been established by a preponderance of the evidence ***Stynchcombe v. Rhodes 238 Ga. 74 (1976)*** The petitioner has proven that his constitutional right to effective assistance of counsel, right to a fair trial, and due

process of law were violated in obtaining the judgement of conviction. ***Gaither v. Gibby 267 Ga. 96 (1996)***; ***Caldwell v. Beard 229 Ga.. 901 (1974)***.

There is a reasonable probability that but for counsel's unprofessional errors the jury could have easily concluded the petitioner acted in a manner that amounted to voluntary manslaughter. The appellant counsel rendered ineffective assistance of counsel for omitting this issue on appeal. There is a reasonable probability a reversal of the conviction would have been granted had counsel raised this issue on appeal. See ***Shorter v. Water 275 Ga 581 (2002)***.

(4) Petitioner has established by a preponderance of the evidence that the appellate counsel was ineffective for failing to challenge the trial court's infringement upon the petitioner's right to be present at a critical stage of the proceedings.

During trial, the jury, the bailiff, and the court conducted a communication outside the presence of the petitioner and the trial counsel. Court: "Well, you know, they wrote guilty, guilty and then they took the verdict form back and wrote voluntary manslaughter, not guilty, and they wrote that after they wrote the guilty on the front." See (HT pg 1357 Lines **23- 251 358** Line 1-10) "Ms. Walker: Okay, I'm sorry, I didn't see that on the back." The Court : "And they offered the verdict form and asked for it back and said they had to change something and the thing they changed is they wrote on the back not guilty as to voluntary manslaughter. And I know from my personal observation that that's what they did." See (HTpg1358 Lines 4-8) There was no waiver of the petitioner's right to attend, nor does the record reflect that the petitioner personally acquiesced in the exclusion and the trial counsel was also unaware of the communication.

Is this -- I don't have a specific recollection. I do recall one case where the jury marked something on voluntary, was that your case? Yes, that was my case. Okay and evidently there was some discrepancies with it because the problem back seats me to later, and in regards to that I was never present, you know, when they -- when they gave formulation on it. Yeah. And we didn't realize it until November 16th, on the day of my sentencing. Right. Right Yeah I don't remember any- any of the specifics but I thought that he should have sentenced you on voluntary. See (HT evidentiary hearing pg. 70 Lines 3- 17.)

I don't recall how this came about . I don't recall. I thought it was unusual for the Judge to call the juror back -- And this was just -- You probably should have been present , if it was something- I mean you definitely - I didn't waive your appearance, so I think it was unusual. I am often confronted with situations in which I have no control over, but I deem to be not particularly fair to the defense that I don't have any control over and that's one of those situations. See (HT evidentiary hearing pg. 73 Lines 10-18.) The petitioner has the right to be present and notified whenever any action is taken which materially affects the accused's case. ***Morris v. State 257 Ga 781(4) (1988)***

The Respondent alleges the petitioner argued on the issue regarding the jury's verdict on direct appeal and therefore this issue is barred by res judicata. The Respondents argument is inapplicable. The petitioner contends he was not present when the communication transpired, not that the jury was rushed to make a decision or that the jury did not properly understand the crimes charged. The petitioner has proven that an actual communication occurred. See (HTpg 1357 Lines 23-25, 1358 Lines 1-8)

The Habeas Court held that the "Attorney Chevada McCamy testified as to the assistant district attorney that tried the Petitioner's case. (HT10). Ms. McCamy did

not recall the reason for Petitioner's absence on November 16th, 2010 but speculates that he may have waived his right to be present. (HT36)

Counsel testified that bringing the jury back was an unusual situation and that she did not waive Petitioner's presence at the proceeding. (HT73) However, upon reviewing the transcript on cross-examination, counsel testified that it appears that the Petitioner was present for the hearing. (HT74) Comparing the testimony at the hearing with Petitioner's brief, there appears to be some confusion regarding the specific instance Petitioner claims to have been absent from the proceedings. The Court has reviewed the entirety of the trial transcript, particularly those portions following the jury charge.(HT1331)

The jury initially returned a verdict of guilty as to felony murder and voluntary manslaughter but took the jury form back and clarified in writing that they found Petitioner not guilty of voluntary manslaughter. (HT1331-1332). The trial transcript clearly indicates that the Petitioner was returned to the courtroom and present during this conference. (HT1331). The trial court recessed following the verdict and returned for sentencing on November 16, 2010. (HT1347-1348). At the sentencing hearing, counsel objected to the Petitioner being sentenced to felony murder as the jury had written "guilty " next to voluntary manslaughter. (HT1357) The trial court explained that the jury had written "not guilty " as to voluntary manslaughter on the reverse of the verdict form and sentenced the Petitioner to felony murder rather than voluntary manslaughter. (HT1357-1358) Petitioner was present during sentencing. Then, on January 4, 2011, the trial court convened a

hearing to clarify the issue of the verdict form and the writing on the back of the form. (HT1476)

The transcript of this hearing indicates that the Petitioner was present and addressed the trial Court. (HT1476) During the testimony at the hearing the jury foreman testified that she hastily wrote guilty next to all counts, gave the verdict the bailiff, realized her mistake, and then asked for the verdict form to be returned so that she could correct the clerical error. (HT1478) The bailiff took the verdict form to the judge for direction and the judge instructed the bailiff to return the form to the jury where they could correct the verdict on the back of the page. (HT1478) The only portion of these events that the Petitioner may not have been present for was the bailiff taking the incomplete verdict form to the judge and then returning said form to the jury for correction as this conversation was not reported.

Criminal defendants have a constitutional right to be present at all proceedings of his trial. ***Hanifa v. State 269 Ga. 797 (1998)*** Assuming that the Petitioner was not present for the conversation between the judge and the bailiff said discussion was purely an administrative function that did not contribute to the verdict and was therefore harmless. See Carter v. State 308 Ga. 589 (2020) Georgia Courts have explained the right to be present to attach to any trial proceeding "that is critical to its outcome if [his or her] presence would contribute to the fairness of the procedure." ***Huff v. State 274 Ga. 110, 111 (2001)***. There is no transcript or testimony regarding the exchange between the judge and bailiff but the testimony at the January 4, 2011 hearing indicates that the judge merely handled an administrative matter and the apparent totality of the communication did not

contribute to the verdict and was harmless. See ***Lowery v. State 282 Ga. 68 (2007)*** see also ***Styles v. State 309 Ga. 463 (2020)*** Therefore, Petitioner's constitutional right to be present was not violated and Petitioner has failed to show that appellate counsel was ineffective for not raising this issue on appeal."

The Habeas Court's ruling is contrary to the evidence presented by the Petitioner and contrary to clearly established federal law according to the VI Amendment of the United States Constitution. The United States Constitution secure the right of criminal defendants to be present at all critical stages of the process against them. Furthermore, on appeal a claim alleging a violation of an appellant's right to be present mandates a reversal. See ***Lyde v. State 311 Ga App. 512 (2011)*** also see ***Hanifa v. State 269 Ga 797, 807 (6) (1998)*** (Harm is presumed from violation of a state constitutional right to be present at all critical stages of the trial.) When an accused is absent from the proceedings no one should have any communications with the jury except regarding matters relating to the comfort and convenience of the jury. ***Wilson v. State 212 Ga 73, 78 (1955)*** ***Pennie v. State 271 Ga 419, 421-422 (2) (1999)*** The United States and the Georgia Constitutions secure the right of criminal defendants to be present at all critical stages of the process against them unlike the federal constitutional right, the violation of the state constitutional right to be present is prejudicial, and absent a waiver, triggers a reversal. Had the appellant counsel properly raised the issue on appeal the Georgia Supreme Court or the trial court would have been obligated to reverse the Petitioner's conviction and sentencing.

The appellate counsel's decision was not a reasonable tactical move which any competent attorney in the same situation would have made. The presumption of effective assistance of counsel has been overcome, the ignored issue was clearly stronger than the errors presented that the tactical decision must be deemed an

unreasonable one only an incompetent attorney would have adopted. There is a reasonable probability the outcome of the appeal would have been different had the appellate counsel raised this issue on appeal. ***Shorter v. Waters 275 Ga. 581 (2002)***

(5) Petitioner has established by a preponderance of the evidence that the appellate counsel was ineffective for failing to raise that the trial counsel rendered deficient performance for failing to obtain the 9-1-1 call with due diligence.

Trial counsel, Monique Walker, failed to obtain the 9-1-1 recording that entailed an eyewitness giving a detailed description of the victim, the victims attire, of the victim brandishing a weapon, following the petitioner and arguing with the petitioner. It is evident, from the record, that counsel was unaware that Anderson identified the victim because the trial counsel did not inquire about the contents of the 9-1-1 call recording during cross-examination.

Counsel has a duty to make reasonable investigations, or to make a reasonable decision that makes particular investigations unnecessary. ***Strickland v. Washington 466 U. S. 668 (1984)*** Strategic choices made after less than complete investigations are reasonable only to the extent that reasonable professional judgement justify the curtailment of counsel's investigation. In this instant counsel had not received the 911 recording and did not make the minimal inquiries to ensure the defense was in possession of the evidence. During trial the following transpired. "

Your Honor, at this time the State would move into evidence State's exhibit 2. Any objection? Your Honor , I did receive the CAD report. However, I did not receive the DVD of it and I had noticed that the 911 operator was Patricia Adams. I

understand he's a director so that would be my objection. " See (TTP 227 Lines - 10)

During this 911 call a description of the victim brandishing a firearm was given to the 911 operator. The trial counsel has a duty to obtain any and all evidence that is relevant, pertinent, material, and favorable to the defense. During the Habeas evidentiary hearing, the following transpired, "In your examination of the records are you familiar with the 911 call of Mattie Anderson? I haven't examined the record. Alright. This will be Exhibits-Exhibits 2 trial transcript. What page of the trial transcript Mr. Allen? Let me see. This will be page 203 and 204. Excuse me I'm sorry it's 225 and 227. Okay, I reviewed it. Your question? It's on page 225 and 227 of my trial transcript, you objected to not being able to provide certain parts of the 911 record. Did you have access to the 911 call of Mattie Anderson calling the East Point Police Department prior to trial? Throughout the trial? Prior to trial? Prior to trial? It states here that -- did not receive a DVD of it. Would you consider this exculpatory evidence if it was favorable to the defense? If it was favorable." "Objection. Judge. that's speculative. I'm going to overrule. May I speak, your Honor? You may. " The contents of this 911 recording contained favorable evidence to the defense that the individuals were armed during the time of the incident and described when she dispatched the 911 caller what the individual was wearing which is Exhibit 63. " Alright. Mr. Allen you're testifying now, giving your position regarding the 911 call. That is not admissible at this point, you'll be given an opportunity to testify at a later time. "Okay." Now's the time to question this witness. "Alright. Did I inform you at trial that this recording contained evidence favorable to the defense? I don't recall. But if the 911 operator was there, I would assume that the 911 call was played for the jury. Well this particular recording was Mattie Anderson dispatching 911, cause it's not the dispatcher

dispatching an officer but the state witness Mattie Anderson dispatching the East Point Police." "And your question is ? Do you remember that the contents of this recording will refute the Prosecution's theory of the case that the shooting was unprovoked - Objection, Judge, its cause for speculation and the question that was before was a jury question. "" I think you're going to have to rephrase Mr. Allen." Do you think the contents of this call was material relevant- relevant to my guilt or punishment or favorable to affirmative defense of self defense? If it contained information that the shooter was armed when I guess the- victim was armed that would be relevant. So the trial transcript says you didn't have access to it. By you not being provided this information prior to trial, would you consider it exculpatory? I believe the State is required to provide all Brady information and if they did not, then that would be a violation. It should have been. Your Honor, if I may I'm sorry. Our discovery I would like to provide the first page of my discovery of what the State everything they provided to her." "You wish to show the document to? Ms. Walker if I may. Let's mark it for purposes of identification. Which would be Petitioner's 5? You may show that to counsel to see if she recognizes or can .... identify it . Ms. Wall, may I speak ? That would be Judge Wall, and you may ask her if she recognizes it or questions relevant to that document? I'm - I'm observing that it is the Certificate of Discovery and for Deimeyon Allen case. Does it have anything pertaining to a 911 recording? It does not. See (HT evidentiary hearing pg. 48- 52)

The document (Petitioner5) was presented at the evidentiary hearing to refresh the trial counsel's memory (Monique Walker what had been provided to the defense by the District Attorney's Office prior to trial. See (Petitioner 5 Certificate of Discovery p. 96) which doesn't contain the 911 recording requested from previous counsel (Alixe Steinmetz) multiple times. See (Petitioner 3 Defendant's Second

Motion to Compel.) If trial counsel would have performed a proper pretrial investigation and not "only" "rely on what previous counsel had done" she would have had a proper understanding of the facts of the case and the relevance of the 911 recording. See (MFNTp. 38 Lines 19- 25 p. 39 Lines 1-4. p.51 Lines 2-25 p. 52 Lines 1-9.

Counsel could not have properly understood the facts of the case because if she knew the contents of this recording before the trial she could have refuted the States theory of the case and properly cross-examined the States witness Mattie Anderson in regards to the 911 recording, namely the description pertaining to the victims clothing and being armed at the time of the shooting. See (Exhibit 2) of the trial transcript recording of Mattie Anderson and compare to (Exhibit 63) There is a reasonable probability had this information been presented in the face of the jury properly there is a reasonable probability the outcome of the proceedings would have been different.

Georgia Rules of Professional Conduct 3. 8. (d) "specifically requires prosecutors to make timely disclosure to the defense all evidence or information known to the prosecutor that tends to negate the guilt of the accused or that mitigates the offense." A violation of this ethical rule, however, is not in itself a constitutional violation and thus not alone a ground for Habeas Corpus. See **O.C.G.A. § 9-14-42 (g)** (limiting post sentencing Habeas Corpus proceedings to claims that the petitioner suffered "a substantial denial of his rights under the Constitution of the United States or this State." Also see ***Britt v. Smith 274 Ga 6 11, 612 (2001)*** (holding that a violation of the Uniform Superior Court Rules, which, like the Rules of Professional Conduct, are promulgated by this Court, is not in itself cognizable in Habeas).

The state's withholding or omission of this evidence from the petitioner's discovery subsequently denied the petitioner's right to a fair trial, frustrated counsel's ability to effectively represent the petitioner, and denied the petitioner his constitutional right to due process. The state breached its constitutional duty to disclose information to the defense which overcomes the procedural default applied to Habeas Corpus claims. See ***Humphrey v. Lewis, 291 Ga 202 (2012)***. The suppressed evidence was favorable to the defense and the trial counsel rendered deficient performance by failing to obtain the evidence on her own. See (Exhibit Petitioner 3) Defendant's Second Motion to Compel. Previous trial counsel requested the 911 recording prior to trial. 911 calls are matters of public record and could have been obtained by the trial counsel with reasonable diligence. Sec. **O.C.G.A. § 50-18-72 (g) (24)** allowing disclosure of 911 recordings to criminal defendant's via an open records act). Also see ***Heidler v. State 273 Ga 54 (2) (2000)*** (No Brady violation where defendant could and did obtain records by means of his own, separate subpoena). The 911 call qualifies as Brady's material, the trial counsel admitted she was not provided this evidence prior to trial, the existence of the 911 call came out during trial which surprised the petitioner and the trial counsel.

The Habeas Court held that "During closing arguments, counsel argued that the 9-1-1 call and Ms. Anderson's testimony that the victim was armed and aggressive in support of the defense theory. Petitioner contends that counsel should have cross-examined Ms. Anderson further regarding her 9-1-1. However, Georgia Courts have repeatedly held that the manner and scope of cross-examination is grounded in trial strategy and tactics which rarely constitutes ineffective assistance of counsel. See Austin v. Carter 248 Ga. 775 (1985); Sullivan v. State 301 Ga. 37 (2017) Counsel's handling of Ms. Anderson's cross-examination clearly falls

within the realm of trial strategy and tactics. Petitioner has not shown that her handling was unreasonable as to the 9-1-1 call was played to the jury in its entirety, and Petitioner has failed to show that appellate counsel was ineffective for not raising this ground on appeal. This ruling is contrary to the evidence presented by the Petitioner.

In the face of the State's theory, it was unreasonable for the trial counsel to fail to obtain the 911 recording and cross-examine Mattie Anderson regarding the contents of the call. There is a reasonable probability that had the trial counsel elicited testimony from Mattie Anderson regarding the victim brandishing a firearm and following the petitioner and his brother to their mother's residence, that the jury would have returned a verdict of acquittal or a lesser included offense of voluntary manslaughter or justification. Furthermore, the state argued during closing that the petitioner did not turn himself in immediately after the shooting and specifically pointed out that this gave the petitioner time to change clothes. See (TTP. 468 Lines 2-6) The prosecutors argument could have easily left the jury with the impression that the petitioner was the individual that Anderson witnessed brandishing the weapon. See (Exhibit 2). State's Exhibit 63) The testimony of a live witness that identified the victim with a weapon and chasing the petitioner is favorable and material to the claim of self defense and contradicts the state's theory that the petitioner shot an unarmed man. There is a reasonable probability had the appellate counsel raised this issue on appeal a new trial would have been granted. ***Shorter v. Water 275 Ga 581 (2002)***.

(6) Petitioner has established by a preponderance of the evidence that the appellate counsel was ineffective for failing to conduct a thorough and sitting cross examination of Mattie Anderson.

Trial counsel, Monique Walker, failed to obtain the 9-1-1 recording that entailed an eyewitness giving a detailed description of the victim, the victims attire, of the victim brandishing a weapon, following the petitioner and arguing with the petitioner. It is evident, from the record, that counsel was unaware that Anderson identified the victim because the trial counsel did not inquire about the contents of the call recording during cross-examination. No competent attorney in the same situation would have foregone questioning the state's unbiased witness regarding evidence that supports the defense theory and contradicts the state's theory that the petitioner was the aggressor and shot an unarmed man.

The petitioner's sole defense was self defense. **O.C.G.A. § 16-3-21 (a)** States that : "A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself against such other's imminent use of unlawful force." The victims actions in brandishing a weapon in the direction of the petitioner is a felony and an imminent use of unlawful force. **O.C.G.A. § 16-5-21 (a)** " A person commits the offense of aggravated assault when he or she assaults: (2) With a deadly weapon ... which when used offensively against a person, is likely to or actually does result in serious bodily injury. To constitute such an assault an actual injury need not be made the aggressor only has to place the individual in reasonable apprehension of receiving a violent injury. See ***Patterson v. State 299 Ga 491 (2016)***

Counsel has a duty to make reasonable investigations, or to make a reasonable decision that makes particular investigations unnecessary. ***Strickland v. Washington 466 U. S. 668 (1984)*** Strategic choices made after less than complete investigations are reasonable only to the extent that reasonable professional judgement justify the curtailment of counsel's investigation. In this instant counsel had not received the 911 recording and did not make the minimal inquiries to ensure the defense was in possession of the evidence. If trial counsel would have performed a proper pretrial investigation and not "only "rely on what previous counsel had done she would have had a proper understanding of the facts of the case and the relevance of the 911 recording See (MFNTp. 38 Lines 19- 25 p. 39 Lines 1-4. p.51 Lines 2-25 p. 52 Lines 1-9. Counsel could not have properly understood the facts of the case because if she knew the contents of this recording before the trial she could have refuted the States theory of the case and properly cross-examined the States witness Mattie Anderson in regards to the 911 recording, namely the description pertaining to the victims clothing and being armed at the time of the shooting. See (Exhibit 2) of the trial transcript recording of Mattie Anderson and compare to (Exhibit 63.) There is a reasonable probability had this information been presented in the face of the jury properly there is a reasonable probability the outcome of the proceedings would have been different.

The trial counsel was not aware of Mattie Anderson's statement during cross-examination of the witness. See (TTP 315 Lines 16 - 25, 316 Lines 1- 11. Ms. Anderson, how are you doing? I'm fine . My name is Monique Walker. We spoke about this. And you just described to the jury a couple things I wanted to go through. Now you said that - why don't you come back down just for one second. You said you heard the voices and the arguing behind your apartment? On one side. Okay. So that was here is that right? Yes And then you saw the shots, and that

was here? Yes, And then you saw three young men running that way, right? Yes. Before the shot? Yes, thank you. That's all I have your Honor. It is obvious from the record that the trial counsel was not aware of the description of the victim brandishing a firearm prior to the shooting because no competent attorney would have failed to address this matter during cross-examination.

The State presented testimony that the petitioner was the aggressor. See (TTP 196-200, 439-454) that the victim was not armed. See (TTP 450 line 11-22) that the shooting was unprovoked (TTP 229-255 , 256-273, 274-279) In the face of the State's theory, it was unreasonable for the trial counsel to fail to obtain the 911 recording and cross-examine Mattie Anderson regarding the contents of the call. There is a reasonable probability that had the trial counsel elicited testimony from Mattie Anderson regarding the victim brandishing a firearm and following the petitioner and his brother to their mother's residence, that the jury would have returned a verdict of acquittal or a lesser included offense of voluntary manslaughter or justification.

The state argued during closing that the petitioner did not turn himself in immediately after the shooting and specifically pointed out that this gave the petitioner time to change clothes. See (TTP. 468 Lines 2-6) The prosecutors argument could have easily left the jury with the impression that the petitioner was the individual that Anderson witnessed brandishing the weapon. See (Exhibit 2 also see State's Exhibit 63) The testimony of a live witness that identified the victim with a weapon and chasing the petitioner is favorable and material to the claim of self defense and contradicts the state's theory that the petitioner shot an unarmed man. The Habeas Court held in her Oder Denying Petitioner Habeas relief that there was insufficient evidence that the Petitioner was threatened with a firearm

which is directly contradicted by Mattie Anderson's call to 911. The Habeas Court's ruling was contrary to the evidence presented by the Petitioner.

The trial counsel was ineffective for failing to obtain the recording prior to trial which would have enabled counsel to conduct a thorough a sitting cross-examination subsequently denying the petitioner of the right to effective cross examination. ***Davis v. Alaska 415 U. 5. 308 (1974)*** Trial counsel's deficient performance prejudiced the petitioner and denied the petitioner's right to a fair trial and due process of law. The manner in which the counsel dealt with the witness on cross-examination was ineffective, was not a strategic decision and prejudiced the petitioner's defense. There is a reasonable probability had the appellate counsel raised this issue on appeal a new trial would have been granted. ***Shorter v. Water 275 Ga 581 (2002)***.

(7) Petitioner has established by a preponderance of the evidence that the appellate counsel was ineffective for failing to raise that the trial counsel was ineffective for failing to file a motion in limine to the introduction of weapons that were irrelevant to the shooting incident and the trial court's abuse of discretion for admitting the evidence over the defense objection.

During trial the state introduced a 25 caliber pistol and a shotgun. HT pg 1169 Lines 5-18, 1175 Lines 7-20) The Habeas Court failed to address the prejudicial introduction, by the trial court over defense objection, in the Habeas Court's Denial of Habeas relief.

It is undisputed that the weapons and ammunition discovered in the petitioner's mother residence were not relevant to the shooting incident nor were they admissible as res gestae. The Habeas Court held that the state clarified that the

brother was witnessed brandishing the shotgun and the Court clarified that the shotgun was discovered in the Petitioner's brother's apartment. The Petitioner's brother was not on trial and the firearms were discovered in the Petitioner's Mother's apartment. Furthermore the Court failed to recognize the Petitioner's Sister's, Tamika Allen, affidavit in regards to the ownership of the firearm discovered in the Petitioner's Mother's apartment. This evidence was introduced into evidence to demonstrate that the Petitioner had access to multiple weapons and this was elaborated on with major emphasis during the state's closing arguments.

The state's reason for the introduction of the evidence was as follows:" Your Honor, this was evidence that was collected at the scene. This is also the apartment Antoine Allen was seen coming out of. (HT p. 1169 Lines 11-13) These weapons presented are subject to the standard of relevance and materiality applicable to other evidence. The evidence surrounding the arrest was wholly unrelated to the charged crime, and the evidence was not shown to be relevant and should not have been admitted. ***Crosby v. State 269 Ga 434, 435 (3) (1998)***.

It is uncontroverted that the victim was shot with a 40 caliber handgun which the Respondent also acknowledges. See (Section III of Respondent's Brief In Opposition) Circumstances connected with a defendant's arrest are admissible, even if such circumstances incidentally places the defendant's character in issue. Furthermore, the Petitioner nor his brother was not arrested at his mother's residence. See ***Benford v. State 272 Ga 348, 350 N. 2 (2000)*** (The evidence must still be shown to be relevant.) ***Benford at 350 (3)*** The prosecutor's reason for the introduction of the evidence after the trial counsel objected were: Your Honor, this was evidence that was collected at the scene. This is also the apartment that Antoine Allen was arrested coming out of." (HT p. 1169 Line 11-13) The court stated "But there's no evidence that the gun was used or seen by anybody, it just

happened to be in the apartment. (HT pg 1169 Lines 14-16) The state did not establish that the evidence was relevant or of any illegality regarding the presence of the weapons in the home, or that the petitioner owned the weapons. Furthermore, the fact that the petitioner may have possessed other firearms at another time, not involved in any manner in the shooting was not probative of the issue of whether he validly acted in self-defense or of the question of his intent in firing the pistol at the victim. ***Traylor v. State 280 Ga. 400, 403 (2) (2006)***.

The state sought to introduce these weapons for the sole purpose to demonstrate that the petitioner owned multiple weapons and stored them at his mother's house. (HTpg. 1274 Lines 1-2 1295 Lines 5-8) Didn't want him to get to his mother's house where his guns are.) (The only time a weapon is produced, pointed, and fired is when they get down to the defendant's mother house where he stores his guns and where he went to get a gun.) The trial counsel was aware or should have anticipated that the state would introduce this evidence at trial. A motion in limine should have been filed to move the court to exclude the introduction of irrelevant prejudicial evidence. ***Glass v. State 255 Ga. App. 390 (2002)*** (Trial court did not err in excluding evidence of the victims first offender plea.) Evidence of the circumstances surrounding an arrest is subject to the same standards of relevance and materiality that govern the admission of all other evidence. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. **O.C.G.A. § 24-4-401.**The decision whether to admit evidence connected to an arrest lies within the discretion of the trial court. ***Dukes v. State 273 Ga 890, 893 (2001)*** The trial counsel made a timely objection to the introduction of this evidence. "Ms Walker: I don't see the relevance of 47. I believe it's a weapon . There's no evidence that that was a. 20 or. 22 used, or, I mean, other

than that. Sec (HT pg. 1169 Lines 7-10) "Ms. Walker: Your Honor, At this time I'm going to object. We do have an evidence sheet. It doesn't indicate where that shotgun was found. And the photos that we have of the shotgun were taken in the back of the police cruiser. So, we would object as to relevance, first a foremost, and then we really don't know -- See (HT 1175 Lines 9-14)

The trial court was aware that the guns were not used, nor were they seen by anybody and that they just happened to be in the apartment. (HTpg 1169 Lines 14-16) These weapons were not probative of the petitioner's guilt and the trial court abused his discretion in admitting the weapons over counsel's objection. The Habeas Court failed to address the Petitioner's allegation that the trial Court abused his discretion in admitting the prejudicial irrelevant firearm and shotgun into evidence over defense's objection in her Denial of Habeas Corpus relief.

The firearms were not of the same caliber and did not shed any light whatsoever on the circumstances of the shooting nor did they have any logical relation to the offense. There is a reasonable probability that the introduction of this evidence contributed to the verdict. The appellant counsel rendered ineffective assistance of counsel in omitting this issue on appeal. ***Shorter v. Waters 275 Ga 581 (2002)***. The petitioner has carried his evidentiary burden with respect to this ground. There is a reasonable probability that the outcome of the appeal would have been different had the appellant counsel raised this issue on appeal.

(8) Petitioner has established by a preponderance of the evidence that the appellate counsel was ineffective for failing to raise that trial counsel was ineffective for failing to object to the prosecutor's improper comment on the defendant's failure to come forward.

During closing the prosecutor stated "Deimeyon Allen didn't turn himself in until the 15th, and in those hours he has got time to change clothes, got time to throw away a weapon, think about the best thing to say and then go talk to the police. " (HT p. 1297 Lines 2-6). Respondent contends that the prosecutor's comment was regarding the time period Petitioner turned himself in. This argument is belied by the state's improper comment. The prejudicial comment was directed at the petitioner's failure to turn himself in the following day to authorities and his alleged actions prior to turning himself in. Acquiescence or silence, when the circumstances require an answer, a denial, or other conduct, may amount to admission. **O.C.G.A. § 24-3-6.** The comment on the petitioner's silence and failure to come forward immediately was far more prejudicial than probative and such comments are not permitted. ***Mallory v. State 261 Ga 625 (1991)***. The trial counsel was ineffective for failing to object.

During the habeas evidentiary hearing the prosecutor and the trial counsel both believed that the prosecutor statement to be a statement of when the petitioner turned himself in. (HT p. 34: Lines 18- 25; HT 62: Lines 9-10 evidentiary hearing) After a review of the prosecutor's comment it's obvious the prosecutor's comment was intended to highlight the petitioner turning himself in at a later date and his alleged actions taken after the shooting transpired. The trial counsel should have made a timely objection, requested a mistrial, or curative instructions and that the prosecutor is reprimanded for the improper comment if a mistrial wasn't deemed necessary. ***State v. Sims 296 Ga 465 (2015)*** Trial court did not err in determining that the trial counsel was deficient for failing to object to the states comments during opening argument referencing defendant's pre-arrest silence and failure to come forward to police after the shooting and in granting defendant a new trial.)

There is a reasonable probability that the prosecutor's comment to view the petitioner's actions prior to arrest as an indication of guilt. prejudiced the defense, and contributed to the verdict. ***State v. Sims Supra (b)***. (Also upon reviewing the record, We agree with the trial court's assessment that the evidence presented on the self-defense issue was somewhat conflicting, such that the jury may have been influenced to the appellant's detriment by the prosecutor's improper comment.) The comments were not isolated and were specifically aimed at the petitioner's actions or inactions prior to turning himself in. Given the petitioner's claim of self defense, his choice not to take the stand, which cannot be used against him, the state's comment of silence amounting to guilt or hiding the truth, the petitioner having time to prepare a story, and the trial counsel's failure to object. severely prejudiced the petitioner. This issue was significantly stronger than any of the issues raised on appeal and the appellant counsel rendered ineffective assistance of counsel for omitting this issue on appeal. There is a reasonable probability the outcome of the appeal would have been different had the appellant counsel raised this issue on appeal. ***Shorter v. Waters 275 Ga 581 (2002)***

(9) Petitioner has established by a preponderance of the evidence that the appellate counsel was ineffective for failing to allege that the collective prejudice from all of the trial counsel's deficiencies should have been considered in weighing prejudice.

The combined effect of all of counsel's errors prejudiced the defense. ***Schofield v. Holsey, 281 Ga. 809, 811, n1 (642, SE, 2d, 56) (2007)***, also see ***State v. Lane S19A1424 (2020)***, Georgia Supreme Court adopts the Cumulative Error Rule in determining whether a criminal defendant is entitled to a new trial.) The cumulative effect of two or more harmless errors has the potential to prejudice the petitioner to the same extent as a single reversible error. The relevant question when a defendant challenges a conviction is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt." ***Strickland, 466 US .668 at 695 (111) (B)***. The Court must consider the totality of the evidence before the judge and jury, while reviewing the record de novo and weighing the evidence as it is expected reasonable jurors would have done. See ***Woodard v. State, 296 Ga. 803,810 (3) (b), n. 5 (2015)***

The trial counsel's errors in the context of the case where the jury heard the prosecutor essentially testify that the petitioner shot an unarmed man, that the petitioner was the aggressor, that the petitioner failed to turn himself in immediately, as indication of guilt severely prejudiced the Petitioner's trial. The combined effect of trial counsel's failure to introduce evidence into the record that directly contradicted the states theory that the petitioner shot an unarmed victim, the trial counsel's failure to effectively cross examine Mattie Anderson, the failure to subpoena and examine a witness that directly contradicted the state's case, the trial court's admission of inadmissible irrelevant prejudicial evidence over defense objection, that further challenged the petitioner's character, trial counsel's failure to object to the state's improper argument during closing, severely undercut the defense's case.

The evidence of guilt was not overwhelming and clearly supported at a minimum, a verdict of a lesser included charge of voluntary manslaughter. Evidence of

voluntary manslaughter may be found in certain situations in which sudden passion was aroused in the person killing so that rather than defending himself he willfully killed the attacker albeit without malice aforethought when it was necessary for him to do so in order to protect himself. ***Syms v. State 173 Ga. App 179 (1985)***

Under these circumstances, the petitioner has shown the required prejudice to prevail on his ineffective assistance claim. See ***Kennebrew v. State, 299 Ga. 864, 873 - 874 (2) (b) (2016)***; ***Fisher v. State, 299 Ga. 478, 486 (2) (b) (2016)***.

(10) Petitioner has established by a preponderance of the evidence that the appellate counsel was ineffective for omitting on appeal the claims raised in his writ of habeas corpus.

During the Motion For News Trial the appellant counsel raised the following:

(A) The verdict is against the weight of the evidence. See (HT 764 -765) Appellate counsel contended that there was incriminating and damaging evidence located at the victim's residence compared to the lack of evidence at the petitioner's mother's home. Empty shell casings at the victim's home does nothing more than demonstrate that a firearm had been fired in the past. Furthermore, the petitioner admitting to firing a weapon in the direction of the victim, therefore the lack of evidence located at the petitioner's mother's home was an argument no competent attorney in the same situation would have made. The inconsistencies in the witnesses statements did not abrogate the fact that the petitioner shot at the victim. This argument was significantly weaker than the issues raised in the petitioner's writ of habeas corpus.

(B) The Court erred in admitting evidence. See (HT 765 - 767) The appellate counsel alleged that the court erred in admitting the statement of the petitioner. The

petitioner voluntarily made a statement after reading the petitioner his Miranda rights. See HTp.576) The Respondent ignores that the appellate counsel clearly omitted that the court erred in admitting inadmissible, irrelevant prejudicial bad character evidence (ammunition, firearm, shotgun) over the trial counsel's objection. No competent attorney in the same situation would have chosen to forego raising a meritorious issue of an abuse of discretion in admitting inadmissible prejudicial evidence over raising error in admitting a statement when the petitioner was informed of his Miranda rights.

(C) Jury misconduct in rendering the verdict before it was ready. Appellate counsel alleged that the jury was rushed to make their decision, and thereby, made numerous errors on the verdict form. The appellate counsel made general assertions that the jury admitted being rushed to render a verdict with no reference to any portion of the record that demonstrated this admission actually occurred. See (HT 767-768) The Respondent and the Habeas Court ignores the fact that the petitioner violation of the right to be present during this critical proceeding would have required a reversal had the appellant counsel had properly raised the issue on appeal. ***Lyde v. State 311 Ga. App. 512 (2011)***

(D) The defendant had ineffective assistance of counsel.

(1) Appellant counsel alleged that the trial counsel was ineffective for failing to locate and present evidence of specific acts of violence by the alleged victim against third parties. See (H1 769- 770)

(2) Appellant counsel alleged that the trial counsel's statement as to unsuccessfully attempting to locate these witnesses did not negate the possibility that a failure to do so constitutes deficient performance. See (HT 769 - 770)

(3) That an evidentiary hearing is required. See (HT 769-770) Appellant counsel was aware that Miranda Robinson was living in South Carolina and failed to present the witness or an affidavit from the witness to demonstrate to the court that the witness was available and willing to testify.

After raising these issues the appellant counsel abandoned the claim of ineffective assistance of counsel on the direct appeal. It is obvious, after a review of the record that the appellant counsel omitted significant and obvious issues while pursuing issues that were clearly and significantly weaker. ***Battles v. Chapman 269 Ga 702, 794 (1998)***; ***Shorter v. Waters 275 Ga 581 (2002)***

Appellant counsel's decision to abandon these issues on appeal was an error no competent attorney in the same situation would have made. There is a reasonable probability that, absent counsel's deficient performance, a new trial would have been granted. See ***Shorter v. Waters 275 Ga. 851 (2002)*** also see ***William v. Moody 287 Ga. 665 (2010)***. A convicted defendant is entitled to effective assistance of counsel on direct appeal.) Had the appellant counsel properly raised these issues on appeal there is a reasonable probability that the trial court or the Supreme Court of Georgia would have granted a new trial. See ***Shorter v. Waters 275 Ga. 851 (2002)***. The Petitioner has established by a preponderance of the evidence that the appellate Counsel was ineffective for omitting on appeal the claims raised in this, his writ of habeas corpus.

(11) Petitioner has established by a preponderance of the evidence that the appellant counsel was in violation of the Bar's Committee on Character, and Fitness while representing the petitioner and that counsel's consumption of Alprazolam, Marijuana and Alcohol impaired her judgement and there is a

reasonable probability that counsel's ability to properly represent the petitioner was impaired which severely prejudiced the petitioner's appeal.

Petitioner's trial counsel. Monique Walker, was a member of the Georgia Bar but this does not immunize her duty as counsel to provide effective assistance of counsel. (HT V 12: 9-11). The petitioner successfully subpoenaed the lead prosecutor and his trial counsel for the evidentiary hearing. (HT 34.25; HT 62:9-10) The petitioner was unable to locate the appellate counsel for numerous years: notified the court of this matter and a continuance was granted to secure the witness for attendance at the evidentiary hearing. Motion For Continuance Filed May 13th 2019. (HTp. 81) The petitioner was able to locate the appellant counsel regardless of her use of numerous last names and her efforts to avoid being discovered. See MFNT pg 3: Lines 17- 20 (Jennifer, your maiden name or married name is Knight, Family Name, Moore was my maiden name But you can call me anything : I'll call you what you want to be called:) Also See (HT Voll pg 4:15-23)(You say you subpoenaed Jennifer Long? No: Monique Walker: Okay But your appellate counsel you mentioned Jennifer, Jennifer L. Wright: Okay because I know the petition says Knight: Yeah: it says Knight, Wright, she's been Knight, Wright, Moore. Also See (HT Vol: pg 6-7).

It is evident after a review of the record that petitioner properly subpoenaed the trial counsel and the prosecutor for attendance. (HT pq 82) Therefore, it is evident that the appellant counsel, after being disbarred for her violation of the Bar's Committee on Character and Fitness, refused to appear at the evidentiary hearing after she was successfully subpoenaed. Appellate counsel failed to appear at the habeas evidentiary hearing. See HT dated Oct. 8, 2019 (Docket Entry No. 94) Counsel was using numerous last names in an attempt to avoid being located and this tactic is normally used when an individual is involved in a criminal enterprise.

(MFNTp. 1483: Lines 17- 22) (HTp 1559). 1582) The petitioner successfully subpoenaed the trial counsel and prosecutor therefore he was aware of how to properly subpoena the witnesses (HTp. 34 Line 25HTp. 62Lines 9-10) See. Post Office documents and affidavit from petitioners niece enclosed with this Amended Brief. Appellate counsel cashed the money order, Oct 2. 2019. Also see exhibit (P10) The Petitioner filed a Judicial Notice on August 31st, 2020 requesting that the Court take judicial notice and an extension of time which would enable the Petitioner to obtain the copy of the receipt which was delayed due to the coronavirus pandemic and was eventually lost in the mail. In addition, an Inmate Request Form was also submitted to the Court on March 17th, 2021 also demonstrating the Petitioner's efforts in obtaining the evidence through the prison and business procedures.

Petitioner has submitted available evidence demonstrating that counsel Jennifer L. Knight indeed cashed the money order, therefore proving that the Petitioner successfully subpoenaed the witness and she determined she would not make herself available for the evidentiary hearing. Counsel cashed the money order six days prior to the petitioner's evidentiary. The appellate counsel's failure to comply with the subpoena has rendered the petitioner unable to obtain testimony with an inquiry of counsel's deficient performance pertaining to the individual grounds.

During representation of the petitioner the appellant counsel was serving a term of probation. Counsel had a history of arrests for driving under the influence, she also failed to take responsibility for her actions and or show remorse, had a tendency to blame others and circumstances for her problems, and counsel possessed a lack of candor with a counselor conducting an alcohol and drug abuse assessment which constituted a violation of **Ga. State Bar Rule 4-102 (a) 8.4 (a) (2)** also see ***In The***

Matter of Jennifer L. Wright 299 Ga. 139 (2016) A high percentage of disbarments stems from untreated substance abuse and it has been statistically proven that lawyers suffer from alcoholism and illegal drug abuse at a much higher rate than non-lawyers. In addition, Georgia weighs unlawful conduct more heavily and requires an applicant to prove full and complete rehabilitation subsequent to conviction ... by clear and convincing evidence which appellant counsel in the instant case failed to do. ***In Re Carson 294 S. E.2d 520, 522 (1982)*** Appellate counsel was disbarred following her guilty plea conviction in the Superior Court of Douglas County for Felony possession of Alprazolam, a Schedule IV Substance. **O.C. G.A. § 16-13-30.**

A hearing was held by The Special Master Margaret Washburn, and it was established that counsel was not in compliance with her probation, which included the requirement that she participate in a substance abuse treatment program and discontinue her use of marijuana. Appellant counsel was appointed to represent the petitioner at the motion for new trial stage on May 30, 2012 and August 2, 2012. Wright filed an entry of appearance and it is uncontroverted that counsel continued the representation of the petitioner's appeal while under the influence of Alprazolam, Marijuana and Alcohol. There is a reasonable probability that counsel's personal life had an affect on her ability to properly represent the petitioner. Alprazolam is used to treat anxiety disorders, panic disorders and anxiety caused by depression. This drug is prohibited from being taken with alcohol and counsel has been known to use Alprazolam, Marijuana and Alcohol. Drinking alcohol while taking alprazolam increases the effects of alcohol. Alprazolam itself impairs thinking judgement, reactions, and other cognitive functions such as paranoid or suicidal ideation, impaired memory, judgement, and coordination. The petitioner's "life, liberty, and property" interests are guaranteed

by the Ga. and U. S. Constitution and are in the professional keeping of lawyers. From a profession charged with such responsibility, there is exacted (1) qualities of truth speaking: (2) high sense of honor: (3) granite discretion of the strictest observance of fiduciary responsibility: that have, for centuries, been compendiously described as moral character ***Schware V. Bd of Bar Exams rs 353 U.S. 232, 247 (1957)*** (Frankfurt concurring)

Counsel's failure to fulfill the necessary moral, and character and fitness while representing the Petitioner, further calls into question whether counsel was able to properly advocate the petitioners cause. The adversarial process protected by the Sixth Amendment requires that an accused have counsel acting in the role of an advocate and the right to effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. The petitioner has demonstrated that the appellate counsel ignored clearly significant stronger issues than those raised on appeal and the petitioner's appeal was severely prejudiced by counsel's decision making and personal life which shall not be condoned in a legal profession. The Habeas Court failed to address this issue in it's ORDER.

CONCLUSION

The petitioner has demonstrated by a preponderance of the evidence that the trial proceeding which resulted in his conviction and subsequent incarceration/detention that there was a substantial denial of his right to a fair trial, right to effective assistance of counsel and due process of law. The petitioner has also demonstrated that the habeas court enter an Order that was contrary to facts presented in evidence

during the evidentiary hearing and contrary to clearly established federal law according to ***Strickland v. Washington and the VI Amendment right to be present***. The Petitioner has further established that the appellate counsel failed to raise meritorious issues on appeal and that there is a reasonable likelihood that the issues raised in the Writ of Habeas Corpus would have prevailed on appeal. The Georgia Supreme Court erroneously ruled that the Petitioner did not file an Application For Certificate Of Probable Cause and failed to view the Petitioner's Application. The Petitioner respectfully request that this his Petition For Writ Of Certiorari is granted with respect to the judgment and sentence challenged in the habeas proceeding and that supplementary order as to re-arraignment, retrial and or discharge is ordered if the petitioner is not tried within a reasonable amount of time.

Respectfully Submitted this 6th day of December 2021

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