

No. \_\_\_\_\_

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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PHILIP JUDE MORAN,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

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**On Petition for Writ of Certiorari  
to the Florida First District Court of Appeal**

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**PETITION FOR WRIT OF CERTIORARI**

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### **A. QUESTION PRESENTED FOR REVIEW**

Whether the state appellate court misapplied this Court’s prejudice standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), when affirming the denial of Petitioner Moran’s claim that his trial attorney was ineffective for failing to present exculpatory evidence at trial.

## **B. PARTIES INVOLVED**

The parties involved are identified in the style of the case.

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The Petitioner, PHILIP JUDE MORAN, requests the Court to issue a writ of certiorari to review the judgment of the Florida First District Court of Appeal entered in this case on April 10, 2024. (A-5).<sup>1</sup> Petitioner Moran timely sought review in the Florida Supreme Court, and the Florida Supreme Court denied the petition for review on December 19, 2024. (A-3).

#### **D. CITATION TO OPINION BELOW**

*Moran v. State*, 383 So. 3d 549 (Fla. 1st DCA 2024).

#### **E. BASIS FOR JURISDICTION**

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal.

#### **F. CONSTITUTIONAL PROVISION INVOLVED**

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.” “[T]he right to counsel is the right to the effective assistance of counsel.” *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970).

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<sup>1</sup> References to the appendix to this petition will be made by the designation “A” followed by the appropriate page number.

## **G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS**

### **1. Statement of the Case.**

In 2014, Petitioner Moran was charged in Bay County, Florida, with one count of second-degree murder relating to the death of his wife, Milissa Moran. Mrs. Moran died on March 7, 2014. At trial, Petitioner Moran's defense was that (1) the State's evidence was insufficient to establish that he committed the crime and/or (2) alternatively, (a) Petitioner Moran was insane at the time of Mrs. Moran's death and/or (b) the State's evidence was insufficient to establish that Petitioner Moran's alleged actions were the product of ill will, hatred, spite, or an evil intent (i.e., the intent element of second-degree murder).

The case proceeded to a jury trial in 2018, and at the conclusion of the trial, the jury returned a verdict of guilty as charged. The state trial court sentenced Petitioner Moran to life imprisonment. On direct appeal, the Florida First District Court of Appeal affirmed the conviction and sentence. *See Moran v. State*, 294 So. 3d 854 (Fla. 1st DCA 2020).

Petitioner Moran subsequently filed a Florida Rule of Criminal Procedure 3.850 motion raising several claims of ineffective assistance of counsel – one of which is the subject of the instant petition. On May 8, 2023, the state postconviction court summarily denied the rule 3.850 motion (without first holding an evidentiary hearing). On appeal, the Florida First District Court of Appeal affirmed the denial of Petitioner Moran's rule 3.850 motion. (A-14).

**2. Statement of the Facts – Trial.**

**a. The State’s Case in Chief.**

**Jeff Duggins.** Mr. Duggins, a deputy with the Bay County Sheriff’s Office, testified that he responded to the house located at 3609 Conwick Drive in order to conduct a “welfare check” after someone reported hearing a “popping sound.” (T-35).<sup>2</sup> Deputy Duggins stated that when he arrived at the house, he approached the back porch and he observed a deceased woman and a dead dog on the porch. (T-36-37).<sup>3</sup> Deputy Duggins testified that he then heard a male voice coming from inside the house. (T-37). Deputy Duggins stated that he subsequently “called for additional personnel.” (T-44).

**David Ward.** Mr. Ward, a lieutenant with the Bay County Sheriff’s Office, testified that on March 7, 2014, he and Deputy Jeff Duggins responded to the house located at 3609 Conwick Drive. (T-51). Lieutenant Ward stated that when he arrived at the house, he observed a deceased female on the back porch and he heard “screaming, yelling, and things being moved inside the house.” (T-53).

**Franke McKeithen.** Mr. McKeithen said that in 2014, he was the sheriff of Bay County. (T-59). Mr. McKeithen testified that on March 7, 2014, he responded to the house located at 3609 Conwick Drive, and he said that he responded to the house after another deputy had found a deceased person and dog at the house, and he

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<sup>2</sup> References to the trial transcripts will be made by the designation “T” followed by the appropriate page number.

<sup>3</sup> The record establishes that the dog had been stabbed. (T-14).



indicated that another person was inside the house and refusing to come out. (T-60). Mr. McKeithen stated that when he arrived at the house, he made a telephone call to the person inside the house (i.e., Petitioner Moran). (T-60-61). Mr. McKeithen testified that during his telephone conversation with Petitioner Moran, he told Petitioner Moran that he needed to come out of the house, and he said that Petitioner Moran responded by saying “it’s beautiful.” (T-61). Mr. McKeithen stated that Petitioner Moran told him that he felt paralyzed and that he could not walk, but Mr. McKeithen said that Petitioner Moran eventually opened the door and a deputy pulled him out of the house. (T-61-62). Mr. McKeithen testified that after Petitioner Moran was pulled from the house, Petitioner Moran screamed that he could not walk and he acted as if he was in excruciating pain, and he said that Petitioner Moran shouted out “military-type terms,” such as “Robert echo, delta.” (T-62). Mr. McKeithen stated that Petitioner Moran’s behavior was “bizarre.” (T-63).

**Jeremy Mathis.** Mr. Mathis, a lieutenant with the Bay County Sheriff’s Office, testified that he responded to the house located at 3609 Conwick Drive on March 7, 2014. (T-67). Lieutenant Mathis stated that when he arrived at the house, he and Sheriff Franke McKeithen approached the door and he said that Sheriff McKeithen told Petitioner Moran to “open the door.” (T-67). Lieutenant Mathis testified that Petitioner Moran cracked the door and said “I can’t open it any more.” (T-67). Lieutenant Mathis stated that he was able to open the door wide enough to get Petitioner Moran out of the house. (T-67-68). Lieutenant Mathis testified that he subsequently conducted a “protective sweep” of the house, and he said that he did not

find anyone else in the house. (T-68).

**Marc Bailey.** Mr. Bailey, an investigator with the Bay County Sheriff's Office, testified that he responded to the house located at 3609 Conwick Drive on March 7, 2014. (T-70-71). Investigator Bailey stated that he rode in the ambulance that transported Petitioner Moran from the house to the jail. (T-71-72). Investigator Bailey testified that during the ambulance ride, Petitioner Moran initially said "I can't believe I killed my wife," and then he said "they killed my wife." (T-72).

On cross-examination, Investigator Bailey stated that Petitioner Moran was acting erratically (i.e., Petitioner Moran indicated that he was a spy who worked for the CIA, and Petitioner Moran said that he "could smell his skin" and that he "had dog abilities"). (T-74-75, 79).

**Bonnie Miller.** Ms. Miller testified that she previously worked for Petitioner Moran and his wife (i.e., she would clean their house and run errands for them). (T-84). Ms. Miller stated that Petitioner Moran and his wife did not get out of their house much. (T-85). Ms. Miller testified that she never observed Petitioner Moran and his wife fight. (T-86). Ms. Miller stated that after she had her child at the end of 2013, she was unable to continue working for the Morans and she said that her brother (Thomas Thompson) took over her duties. (T-86).

On cross-examination, Ms. Miller stated that she was aware that the Morans had a safe in their house and she said that the Morans kept gold coins in the safe. (T-91). Ms. Miller testified that she frequently went to a coin store for Petitioner Moran in order to "[c]ash[] in gold coins," and she said that her brother also cashed in gold

coins for Petitioner Moran. (T-89-90, 97). Ms. Miller stated that during the time that she worked for the Morans, they provided her with a vehicle (a Toyota RAV4), but she said she had to give the vehicle back to them after she stopped working for them at the end of 2013. (T-90). Ms. Miller testified that her brother is a smoker. (T-98).

**Tim Adkins.** Mr. Adkins, an investigator with the Bay County Sheriff's Office, testified that he processed the scene (i.e., 3609 Conwick Drive) on March 7, 2014. (T-101). Investigator Adkins stated that he took a video and pictures of the scene, and during Investigator Adkins' testimony, the State played the video and published the pictures for the jury. (T-102-136). Investigator Adkins testified that he found ammunition and pill bottles throughout the house, and he also found a Ruger M77 rifle in the house. (T-105, 118). Finally, Investigator Adkins stated that he found a safe in the house, and he said that the safe was open and there were no gold coins in the safe. (T-124-125).

On cross-examination, Investigator Adkins testified that he also collected a "fresh cigarette butt" from a table on the porch close to where Milissa Moran's body was found. (T-148).

**Mike Wesley.** Mr. Wesley, a sergeant with the Bay County Sheriff's Office, testified that he assisted Investigator Tim Adkins with processing the scene (i.e., 3609 Conwick Drive) on March 7, 2014. (T-155). Sergeant Wesley testified regarding the trail of blood that he observed in the house while processing the scene. (T-156-170).<sup>4</sup>

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<sup>4</sup> In opening statements, the prosecutor indicated that the trail of blood started in the master bedroom and ended by the back door. (T-18).

**Steve Rhinehart.** Mr. Rhinehart, an investigator with the Bay County Sheriff's Office, testified that he obtained recordings of phone calls made by Petitioner Moran during the time that he was housed at the jail (and during Investigator Rhinehart's testimony, the recordings of the jail calls were played for the jury). (T-183-186).

**Tim Adkins (recalled).** Investigator Adkins stated that after he responded to the house located at 3609 Conwick Drive, he went to the jail to take photographs of Petitioner Moran. (T-202). Investigator Adkins claimed that when he was at the jail, Petitioner Moran said "I killed her" and then said "Milissa." (T-203).

**Chad Smith.** Mr. Smith, a crime laboratory analyst with the Florida Department of Law Enforcement (hereinafter "FDLE"), testified that he examined certain exhibits and he determined that State's Exhibit J-1 (a cartridge case) was fired by State's Exhibit J (a Ruger M77 rifle). (T-210-212).

On cross-examination, Mr. Smith stated that the Ruger M77 rifle has a "light trigger pull." (T-213). Mr. Smith conceded that an accidental discharge is more likely with a firearm that has a light trigger pull. (T-214-215).

**Elizabeth Richey.** Ms. Richey, a firearms analyst with FDLE, stated that she examined certain projectile fragments (State's Exhibit K) and she said that the "land and groove widths" of the fragments were "similar to the Ruger," but she said that because of the damage to the fragments, she could not include or exclude the fragments as coming from the Ruger M77. (T-220-222).

**Jennifer Hatler.** Ms. Hatler, a senior crime laboratory analyst with FDLE,

testified that Petitioner Moran's DNA and Milissa Moran's DNA were found on items that were seized from the house located at 3609 Conwick Drive (i.e., a shoe, jeans, and other items on which blood was found). (T-240, 243).

On cross-examination, Ms. Hatler stated that she also conducted DNA testing on a cigarette butt that was found next to Mrs. Moran's body, and she said that Thomas Thompson's DNA was found on the cigarette butt. (T-256-257).

**Mike Wesley (recalled).** Sergeant Wesley stated that a fired casing was found at the house located at 3609 Conwick Drive, and he opined that "most likely this round was fired at the house." (T-267-268).

**Joe Walker.** Mr. Walker, a deputy with the Bay County Sheriff's Office, testified that he was working at the jail in March of 2014. (T-270). Deputy Walker stated that during the time that Petitioner Moran was at the jail, he heard Petitioner Moran say "I did it, I did it, I did it, I pulled the trigger, but then she got up afterwards." (T-271).

**Andrew Winkler.** Mr. Winkler, a forensic investigator with the Medical Examiner's Office, testified that he responded to 3609 Conwick Drive on March 7, 2014, and he said that he photographed Milissa Moran's body and placed her body in a body bag so that she could be transported to the Medical Examiner's Office. (T-277-278).

**Jay Radtke.** Dr. Radtke, a medical examiner, testified that Dr. Michael Hunter performed the autopsy of Milissa Moran, but he said that Dr. Hunter subsequently moved to California and therefore he (i.e., Dr. Radtke) reviewed Dr. Hunter's report

and formed his own opinion regarding Mrs. Moran's cause of death. (T-282). Dr. Radtke stated that Mrs. Moran's cause of death was a "[g]unshot wound to the head," and he opined that the firearm was less than three feet from her head when she was shot. (T-289-290, 292). Dr. Radtke testified that Mrs. Moran's toxicology results showed that she had methamphetamine, phentermine, temazepam, and alprazolam (i.e., Xanax) in her body at the time of her death. (T-291-292).

At the conclusion of Dr. Radtke's testimony, the State rested. (T-296).

**b. Petitioner Moran's Case in Chief.**

**Steven Majors.** Mr. Majors stated that in March of 2014, he was a correctional officer at the jail. (T-308). Mr. Majors testified that he came into contact with Petitioner Moran during the time that Petitioner Moran was in the jail, and Mr. Majors said that Petitioner Moran was being housed in the suicide prevention dormitory of the jail. (T-309). Mr. Majors opined that Petitioner Moran "didn't seem right." (T-310).

**Tammy Corollo.** Ms. Corollo stated that Petitioner Moran is her husband's cousin. (T-317). Ms. Corollo testified that she talked to Petitioner Moran on the phone on March 7, 2014, and she gave the following description of the conversation:

I received a call, I'm guessing, I can't remember the time, it's been so long, but I think around maybe noon-ish, around that time, from Philip.

And I don't think Philip even knew it was my phone number, he was very confused as to who it was that he was dialing, he didn't know. And he asked me who it was when he called the phone, and I said it's Tammy. I said it's Frankie's wife. And I asked him how he was doing, and he didn't really answer me, you know, in a clear answer.

I asked him how Milissa was doing, and he said, I need help,

somebody needs to get me help. And I said what do you mean you need help? And he said, he told me that he needed me to call and get somebody over to his house, Milissa needed help. And I said what's wrong with Milissa?

And he said I can see her, but I can't get to her. And I said what's wrong? I said I don't know where you live, Philip. I said I don't know how to help you, I've never been to your house. I didn't know the address. He said, please call, please call, and he kept repeating himself over and over again and it scared me.

I said why can't you get to Milissa, and he said my knees feel like cement, I can't move. And he kept repeating it, you know. It was just a repetitive conversation. And I said, well, I got to hang up and he just kept talking.

So, I hung up the phone and then I called my cousin, Carmelia, back in Rhode Island. And I said Carmelia, someone needs to call Auntie Bernie, I don't know how to get ahold of her. I don't have phone numbers, proper phone numbers.

So, then when I hung up with Carmelia, I called my mother-in-law in Boynton Beach, and I said Lily, Philip needs help. He's asking for help. Something is wrong. There needs to be a house check, well-call check, whatever it's called, and that was it from there.

(T-319-320).

**Carmelia Moran.** Ms. Moran, Petitioner Moran's cousin, testified that she talked to Petitioner Moran on the phone on March 7, 2014, and she gave the following description of the conversation:

Well, I was asking him where Milissa was, but he was saying things like – well, I was trying to get information out of him and he was not wanting to tell me on the phone because people were listening on the phone, that kind of thing. I was asking him where Milissa was. He had told me that he was in the bathroom. He started yelling when he was in the bathroom. I asked him where he was. He said he was sitting on the couch. I'm trying to remember the conversation specifically but –

Q. Sure. He told you a lot of conflicting different things?

A. Yes.

Q. Did it sound like he was in his right mind when you spoke with

him?

A. No.

(T-324-325). Ms. Moran stated that following this conversation, she contacted her aunt (Bernadette Scuderi) and asked her to call law enforcement officials. (T-326).

**Bernadette Scuderi.** Ms. Scuderi, Petitioner Moran's mother, testified that in the weeks prior to March 7, 2014, her son had been "making weird phone calls" – i.e., "phone calls that [she] just couldn't make head nor tail of." (T-333). Ms. Scuderi added that when she talked to her son on these phone calls, "[i]t wasn't the Phillip that [she] normally knew." (T-334).

**Christopher Chad King.** Mr. King, a lieutenant with the Bay County Sheriff's Office, testified that he responded to the house located at 3609 Conwick Drive on March 7, 2014. (T-342). Lieutenant King stated that when he arrived at the house, he came into contact with Petitioner Moran and he said that Petitioner Moran made "some growling noises" at him. (T-342-343).

**Amanda Fox.** Ms. Fox, an employee with the Bay County Animal Control, testified that she responded to the house located at 3609 Conwick Drive on March 7, 2014. (T-344). Ms. Fox stated that when she arrived at the house, she took possession of a deceased dog and she said that she later delivered the dog's body to the coroner's office. (T-345).

**Katherine Lowe.** Ms. Lowe stated that she worked for Bay County EMS in March of 2014. (T-347). Ms. Lowe testified that she responded to the house located at 3609 Conwick Drive on March 7, 2014, and she said that she subsequently transported



Petitioner Moran from the house to the jail. (T-347-349).

**David Keeney.** Mr. Keeney, a paramedic with Bay County EMS, testified that he responded to the house located at 3609 Conwick Drive on March 7, 2014, and he said that he subsequently transported Petitioner Moran from the house to the jail. (T-352-353). Mr. Keeney stated that during the time that Petitioner Moran was in the ambulance, Petitioner Moran was “babbling,” “yelling,” and speaking in military jargon (i.e., “everybody ten four”). (T-354). Notably, Mr. Keeney testified that he never heard Petitioner Moran make any statement such as “I did it.” (T-356).

**Marc Bailey.** Investigator Bailey stated that on March 7, 2014, he created a video recording of Petitioner Moran (Defendant’s Exhibit 1). (T-361). During Investigator Bailey’s testimony, the video was played for the jury. (T-361-362).

**Hailey Hammock.** Ms. Hammock, a family member of Petitioner Moran (i.e., Thomas Thompson is the father of her child), testified that she was interviewed by law enforcement officials following Milissa Moran’s death and she told law enforcement officials that for the previous two months, she had not seen Petitioner Moran “normal at all.” (T-382).

**Charles Thompson.** Charles Thompson, Milissa Moran’s uncle, stated that approximately five days before March 7, 2014, he called law enforcement officials requesting that they conduct a “welfare check” on the Moran residence, but he said that although a deputy responded to the road where the house was located, the deputy refused to go inside the house and check on the Morans. (T-394-395).

On cross-examination, Charles Thompson said that at the time he requested the

“welfare check,” he had just met with Mrs. Moran and she said “if he shoots me, I’ll shoot him back.” (T-397-398).

**Michael Thompson.** Michael Thompson, Milissa Moran’s uncle, stated that within the weeks prior to March 7, 2014, he received a voice mail from Petitioner Moran wherein Petitioner Moran said the following:

“Hey, Mike, I didn’t want to bother you. It’s Phil. I wanted to thank you, and, an, ah, a little birdie flew on my shoulder a while ago and told me, told me that, you know, I am having mental problems. I am crazy like a fox, genetic, intelligent, genetically fast. My father was yeah, yeah, yeah, blah, blah, blah, okay. Good news, the Russians are in revolt. I knew them son of a bitches didn’t take off one hat and put on the other. You passed the test. The plus, you can be trusted. And let me see there, what else, I am so excited. There will be stability again in the Cold War. We had a lot of stability, it was great, America was good. Inaudible. F’ing 911. Okay, right. I think you will understand now. Take care, man, we will see you. And say hi to Matt Thompson, the soldier. Bye.”

(T-399-401). Michael Thompson testified that he subsequently provided a recording of the voice mail to law enforcement officials. (T-401). Michael Thompson stated that he went inside the house located at 3609 Conwick Drive shortly after March 7, 2014, and he said that the living conditions of the house were “horrible” (i.e., “[t]here w[ere] dog and cat feces everywhere”). (T-402).

**Michael Cunningham.** Mr. Cunningham stated that Milissa Moran is the cousin of his wife (Jennifer Cunningham). (T-407). Mr. Cunningham testified that in 2014, Petitioner Moran accused him and his son (Thomas Thompson) of dealing drugs/pills to Milissa Moran, but Mr. Cunningham said that the accusation was false. (T-408).

**Jennifer Cunningham.** Mrs. Cunningham, Milissa Moran’s cousin, stated

that Petitioner Moran and her son (Thomas Thompson) were very close, and she said there were discussions about her son changing his last name to Moran so that he could be a Moran heir. (T-415-416).

**Thomas Thompson.** Thomas Thompson, a family member of Milissa Moran, was asked whether he was aware of Petitioner Moran's mental state on March 7, 2014, and he responded "I plead the Fifth." (T-429).

**Tim Adkins.** Investigator Adkins stated that he did not conduct a gunshot residue test on Petitioner Moran's hands (and he explained that the reason that he did not is because "it's no longer required" and that such a test cannot be sent to FDLE). (T-434).

**Christopher Robinson.** Mr. Robinson, a crime scene/forensic analyst, testified that the trigger pull on the Ruger M77 rifle is "extremely light" (i.e., he said that the trigger pull was 2.5 pounds, and he explained that normally "weapons of this type, the trigger pull is between 6 to 7 pounds"). (T-443).

**John Sawicki.** Mr. Sawicki, a forensic computer scientist and electronic evidence consultant, testified that he reviewed text messages from the cell phones belonging to Petitioner Moran and Milissa Moran. (T-471-472). Mr. Sawicki stated that in early March of 2014, Petitioner Moran sent the following texts:

- March 2, 2014: "...we can all go out Ritz Carleton suite exclamation clan five that's us tell no one til cameras go up I will put my knife through my palm to prove Roman Catholics do not commit adultery no knife Hailey please cat 09 tail I am trained" (T-475);
- March 2, 2014: "Nanny dog me sun equals life no life no nothing before I die my dick does not work there thanks" (T-476);

- March 2, 2014: “Hailey chieftain goes into the cage first between 16 foot of what will scare the shit out of you 101 sorry between the great white N U equals old fart” (T-476);
- March 2, 2014: “Pez dispenser for Xanax Pez dispenser laughter equals medicine not feckin bloody pills learning question mark now boy” (T-477);
- March 3, 2014: “when is Tommy going to cash in those coins, we need that money ASAP tomorrow” (T-474);
- March 3, 2014: “Jesus Mary and Joseph the Russians are in a meltdown the cold war is on yahoo, series of exclamation, stability they finally heard me say to Mohammed I wish the fucking cold war was back on, a series of exclamation marks, stability, no VC on, I believe that’s US soil Lily is safe ya the commies went broke ok DA American on pills, exclamation, get it, with an exclamation mark and a series of question marks” (T-479);
- March 3, 2014: “The cold war Russia is in a revolt a tiny lil birdy told me equals stability the commies took off on hat put on another remember I can’t read or write” (T-479); and
- March 3, 2014: “Crazy like a wolf, exclamation” (T-479).

**Casey Wilson.** Mr. Wilson stated that in the summer of 2014, he was in the Bay County Jail and he said that he came into contact with Petitioner Moran at the jail. (T-483). Mr. Wilson testified that Petitioner Moran was in a “catatonic state”/“vegetated state” and he said that he observed him at times “playing in his own feces, laying in his puke and urine.” (T-484).

**Nicholas Gray.** Mr. Gray, a sergeant at the Bay County Jail, testified that he came into contact with Petitioner Moran at the jail in 2014 and he said that Petitioner Moran was not operating with all of his mental faculties. (T-493). Sergeant Gray stated that he had to provide a wheelchair to Petitioner Moran so that Petitioner Moran could move from one location to another, and he said that he had to assist

Petitioner Moran with eating, using the bathroom, and other daily activities. (T-493-494).

**James Smith.** Mr. Smith, an employee in the suicide unit at the Bay County Jail, testified that in 2014, he came into contact with Petitioner Moran at the jail. (T-501). Mr. Smith stated that when Petitioner Moran first arrived at the jail, he “couldn’t walk” and he “wouldn’t communicate at all.” (T-502). Mr. Smith testified that Petitioner Moran would often talk “all out of his mind.” (T-502).

**Lawrence Nelson.** Mr. Nelson, a correctional officer at the Bay County Jail, testified that he observed Petitioner Moran on cameras during the time that Petitioner Moran was in the jail. (T-510-511). Mr. Nelson stated that he believed that Petitioner Moran was crazy. (T-511). Mr. Nelson testified that he also observed Petitioner Moran smear his feces on the walls of his cell. (T-512).

**Jeffrey Danziger.** Dr. Danziger, a psychiatrist, testified that he had previously evaluated Petitioner Moran and reviewed numerous police reports and medical records relating to this case, including a video that was taken of Petitioner Moran on March 7, 2014, and text and voice messages that had been sent by Petitioner Moran prior to March 7, 2014. (T-532-534, 539-540). Dr. Danziger stated that he conducted specific testing with Petitioner Moran to determine if Petitioner Moran was malingering, and he said that the results of the tests showed that Petitioner Moran was not malingering (i.e., “[t]he testing came out as someone with genuine mental illness, not exaggeration”). (T-535-538). Dr. Danziger opined that if Petitioner Moran

committed the offense in this case, then Petitioner Moran was insane at the time of the offense:

My opinion is that he would not have known the wrongfulness of his conduct, and I base that on the March 7th video. Someone who is so mentally ill, so disordered, so fragmented in his thinking, that, in my opinion, he could not have formed the intent. He would not have been able to know what he was doing was wrong by his incoherence and extreme symptoms of mental illness, which, from my, as a forensic psychiatrist, it's fortunate to me I could see that video and see what he was like right at the crime scene immediately after.

(T-549-550).

Dr. Danziger stated that he did not believe that Petitioner Moran's symptoms were the result of withdrawal/detoxification from drug ingestion:

But here's why I don't think the symptoms are withdrawal. I saw him in July, 2014, January, 2016, he was still mentally ill at the time. It could not have been due to drug withdrawal.

Now, it's possible that some of the early symptoms could have been due to drug withdrawal. But we still have data to show that he was mentally ill before the events of March 7th. And again, that's why it's dangerous to just dismiss someone as malingering, because the jail doctors do not consider the possibility of drug withdrawal.

And there were other factors. When he came into the jail, they did some laboratory studies. He had a white count of 24.8. The white blood cells are the cells in your blood that fight infection. A normal white blood count is four to 12, he was almost 25. Why? I don't know. Nobody followed up on it.

Similarly, he had an ammonia level in the 60s. Our liver, when we ingest food, it has some nitrogen in it, our liver eliminates that. We actually have a little bit of ammonia in our blood stream. When the ammonia level gets too high, that could be a sign of liver disease. A high ammonia level can make you, distort your thinking, never followed up on.

His kidney numbers were off. He had a creatinine of 1.32. Creatinine is a measure of kidney function. His kidney functions, maybe he was just dehydrated, we don't know because nobody followed up on it.

So, he was acting very oddly, apparently consistently doing things that would take a very dedicated malingerer to actually lie in his own excrement or smear it on himself or eat it. And there were abnormalities

in his labs. Nobody at the jail even considered the possibility of detoxification. They just said we think he's faking. And I say they were wrong.

(T-551-552). Dr. Danziger added that Petitioner Moran was under the delusion that someone was trying to kill him:

My opinion, he was under the delusion that people were trying to kill him, that he was being poisoned with some sort of substance and people were trying to kidnap – I'm sorry, people were going to kill him and involve his wife in some sort of strange sexual practices.

(T-557).

At the conclusion of Dr. Danziger's testimony, the State rested. (T-600).

**c. The State's Case Rebuttal.**

**David Delaney.** Mr. Delaney, an investigator at the Bay County Jail, testified that in the summer of 2014, Petitioner Moran was housed in a "special dorm" at the jail, and he said that during that time period, Casey Wilson was housed in a separate dorm (and he indicated that inmates housed in Mr. Wilson's dorm would not shower with inmates housed in Petitioner Moran's dorm). (T-601-603).

On cross-examination, Mr. Delaney acknowledged that inmates housed in different dorms could pass each other in the jail hallways. (T-604).

**Steve Clayton.** Mr. Clayton stated that he worked at the Bay County Jail in 2014. (T-609). Mr. Clayton testified that when he worked at the jail, he came into contact with Petitioner Moran, and he said that during the first two months that Petitioner Moran was in the jail, he was "irrational" (i.e., he "roll[ed] around in his own feces"), but he said that after that initial two-month period, Petitioner Moran "became

really coherent and seemed more himself.” (T-610). Mr. Clayton opined that Petitioner Moran’s behaviors during the initial two-month period were “a show.” (T-611).

**Seth Imhof.** Mr. Imhof, a paramedic with Bay County Emergency Services, testified that he responded to the house located at 3609 Conwick Drive on March 7, 2014, and he said that he assisted in loading Petitioner Moran on to a stretcher so that he could be transported from the scene in an ambulance. (T-618-619). Mr. Imhof stated that it was his opinion that Petitioner Moran “was kind of just acting out” and exhibiting “childish behavior” and therefore Mr. Imhof concluded that Petitioner Moran was faking his symptoms. (T-620, 622).

On cross-examination, Mr. Imhoff conceded that he spent “[l]ess than two minutes” with Petitioner Moran. (T-622).

**Tanner Michael.** Mr. Michael, a mental health specialist at the Bay County Jail, testified that he met with Petitioner Moran at the jail on March 8, 2014. (T-629-630). Mr. Michael stated that after meeting with Petitioner Moran, he gave Petitioner Moran a diagnosis of “malingering.” (T-630).

On cross-examination, Mr. Michael admitted that he did not give Petitioner Moran any tests to determine if he was malingering. (T-631).

**Vicki Alberts.** Dr. Alberts, a psychiatrist, testified that she works part-time at the Bay County Jail. (T-635-636). Dr. Alberts stated that she came into contact with Petitioner Moran at the jail in 2014 after Petitioner Moran had been at the jail for approximately one week, and she said that after meeting with Petitioner Moran,



it was her impression that Petitioner Moran “was someone who was attempting to feign mental health symptoms in order to avoid prosecution.” (T-637).

On cross-examination, Dr. Alberts admitted that she did not give Petitioner Moran any tests to determine if he was malingering. (T-638).

**Gregory Prichard.** Dr. Prichard, a psychologist, testified that he reviewed documents and records relating to this case and he said that he evaluated Petitioner Moran. (T-651-652). Dr. Prichard opined that Petitioner Moran was sane at the time of the offense in this case. (T-652).

At the conclusion of Dr. Prichard’s testimony, the State rested. (T-734).

**d. Verdict.**

The parties gave their closing arguments (T-739-812), and the trial court instructed the jury. (T-812-826). The jury found Petitioner Moran guilty as charged. (T-828-829).

## H. REASON FOR GRANTING THE WRIT

### **The question presented is important.**

In his state postconviction motion, Petitioner Moran alleged that defense counsel rendered ineffective assistance of counsel by failing to present exculpatory evidence. Specifically, defense counsel failed to introduce a voicemail where Petitioner Moran said the following:

Hey Mike, it's Phil Moran. I got a . . . got a favor . . . (inaudible) . . . but I'm in the closet right now hiding. The TV's up so I can talk, okay? Uh . . . I don't know how to say this Mike fucking Cunningham will not stop . . . (inaudible) . . . fucking trying to sell my wife fucking drugs. He's trying to do it through Jennifer [Cunningham]. Through everybody. If he doesn't fucking stop, I know what he's up to. The fucking guy asks me every fucking time why do you have a fucking gun next to you(r) close(t). It's like every fucking time. I say . . . (inaudible) . . . come through that door or that door. You wonder who's breaking in down here? That fucking animal. If he doesn't stop fucking trying to sell . . . drugs to my fucking wife. She's fucked up now. She's like a 10-year-old putting on lipstick all over her fucking face. If he doesn't fucking stop, he's gonna be so fucking sorry. He's gonna be so fucking sorry. He's gonna be so fucking sorry.

At trial, the State's contention regarding the motive of Petitioner Moran was that he allegedly killed his wife due to her drug problems and Petitioner Moran's anger over them: "I submit to you that drug addiction was the main problem that this couple had and ended to why we're all here today." (T-744-745). However, the voicemail demonstrates that the State had their argument backward because Petitioner Moran *was angry at Mike Cunningham* for selling his wife drugs and causing her condition, showing both his protectiveness of her and his directing of his anger over the drug use to Mike Cunningham instead of his wife. Further, Petitioner Moran's theory of defense was that another person committed the crime and, while this was targeted at Tommy

Thompson, whose DNA was on a fresh cigarette found at the scene, the theory of defense would have been aided by this voicemail. Petitioner Moran states that: “if he doesn’t fucking stop, I know what he’s up to. The fucking guy asks me every fucking time why do you have a fucking gun next to you(r) close(t). It’s like every fucking time. I say . . . (inaudible) . . . come through that door or that door. You wonder who’s breaking in down here? That fucking animal.” This statement makes clear that, in the view of Petitioner Moran, *Mike Cunningham had broken into his home before and knew the location of one of his guns*. The reliability of this voicemail is bolstered by the fact that it was sent prior to the death of Petitioner Moran’s wife. This voicemail makes it far more likely that Mike Cunningham broke into the Moran’s home and killed the decedent, either with the firearm he knew about in the home or with another firearm. Mike Cunningham, moreover, would have been angry with both Petitioner Moran (for threatening him) and at the decedent (as he may have believed based on the voicemail that she disclosed his identity as her dealer, which gave Mike Cunningham motive to kill her, leaving Petitioner Moran to assume the blame). Finally, whether the accusation that the Cunninghams sold drugs to the decedent is legitimate or not, Petitioner Moran had a right to present this evidence to the jury – as the evidence would have been exculpatory.<sup>5</sup> If the accusation was legitimate, then it would have

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<sup>5</sup> The Sixth Amendment, as interpreted by the Court, guarantees a criminal defendant the right to present a defense. *See Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). “[A]t a minimum, . . . criminal defendants have the right . . . to put before a jury evidence that might influence the determination of guilt.” *Taylor v. Illinois*, 484 U.S. 400, 408 (1988) (internal quotation marks omitted). A criminal defendant’s right to present a defense is essential to a fair trial. *See United States v. Valenzuela-Bernal*,

provided a motive for Mike Cunningham or Jennifer Cunningham to kill the decedent (as explained above). If the accusation was false, on the other hand, then it would have bolstered the defense's insanity claim because the voicemail evidenced paranoid thinking.

In its opinion affirming the denial of this claim, the Florida First District Court of Appeal stated the following:

The trial court did not err in rejecting Moran's argument because if even if the voicemail had been admitted at trial, Moran could not show there was a reasonable probability that the outcome of his trial would have been different. *Strickland*, 466 U.S. at 684 (holding that to establish prejudice, a defendant must show that the result of trial would have been different); *Waterhouse v. State*, 792 So. 2d 1176, 1182 (Fla. 2001) (holding that if a defendant fails to satisfy one prong of *Strickland*, then it is unnecessary to address the other prong). The police found Moran's wife dead on the back porch of the marital home. Even though the police heard Moran walking around the home while yelling and talking to himself, Moran claimed that he could not exit the house because he could not walk. Two officers dragged Moran out of the home, but Moran walked to the ambulance for medical treatment. A video of Moran's erratic behavior was played for the jury.

The State admitted physical evidence to show that Moran was responsible for killing his wife. The evidence showed a blood trail throughout the home and suggested that someone tried to clean up and hide the trail. A spent casing and bullet fragments were also recovered during the search. An expert then linked the casing to one of Moran's rifles.

Moran also made several inculpatory statements. While in the ambulance, Moran said, "I can't believe I killed my wife," and "they killed my wife." Investigator Adkins heard Moran say, "I killed her," while Moran was in jail. Deputy Joe Walker also heard Moran say, "I did it, I

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458 U.S. 858, 875 (1982) (O'Connor, J., concurring). *See also* U.S. Const. amends. V and XIV. "[W]here evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission." *Mateo v. State*, 932 So. 2d 376, 379 (Fla. 2d DCA 2006) (citation omitted). "Thus, as a general proposition, any evidence that tends to support the defendant's theory of defense is admissible, and it is error to exclude it." *Id.* (citations omitted).

did it, I did it, I pulled the trigger, but then she got up afterwards.” Based on this evidence, there is no reasonable probability that the admission of the voicemail would have changed the outcome of the trial. *See Reed v. State*, 326 So. 3d 767, 773 (Fla. 1st DCA 2021) (“[T]he evidence introduced at trial was so overwhelming that Appellant cannot demonstrate that he was prejudiced by any alleged failure on the part of trial counsel.”).

(A-9-10). In reaching this conclusion, Petitioner Moran submits that the state appellate court misapplied this Court’s prejudice standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).

Regarding the prejudice prong of the *Strickland* standard, the Court clarified that a defendant need not demonstrate it is “more likely than not, or prove by a preponderance of evidence,” that counsel’s errors affected the outcome. *Strickland*, 466 U.S. at 693-694. Instead:

[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

*Id.* at 694. “When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.” *Id.* at 695. In making this determination:

a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. Some of the factual findings will have been unaffected by the errors, and factual findings that were affected will have been affected in different ways. *Some errors will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture*, and some will have had an isolated, trivial effect. Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support. Taking the unaffected findings as a given, and taking due account of the effect of the errors on the remaining

findings, a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors. . . . *[T]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.*

*Id.* at 695-696 (emphasis added).

Applying this standard to Petitioner Moran’s case, Petitioner Moran has established that the fundamental fairness of his trial has been called into question due to counsel’s ineffectiveness, and that counsel’s error in failing to present the voicemail at trial undermines confidence in the outcome. Defense counsel’s argument to the jury at trial would have been much stronger had the voicemail been played for the jury. As explained above, the voicemail disputes the State’s alleged motive, demonstrates Petitioner Moran’s anger at Michael Cunningham, and shows Petitioner Moran’s *protectiveness of his wife* – thereby creating reasonable doubt regarding the intent element of second-degree murder.<sup>6</sup> Clearly counsel’s failure to introduce the voicemail resulted in a “pervasive effect” on the “inferences” to be drawn from the evidence and indeed did “alter[] the evidentiary picture.” *Strickland*, 466 U.S. at 695-696.

By granting the petition for writ of certiorari in the instant case, the Court will have the opportunity to reaffirm the proper prejudice analysis that applies to Sixth Amendment ineffective assistance of claims. The question in this case has the potential to impact numerous *Strickland* cases nationwide. The Petitioner urges the Court to exercise its discretion to hear this important question.

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<sup>6</sup> Absent intent, the offense in this case was at most manslaughter.

## I. CONCLUSION

The Petitioner requests the Court to grant his petition for writ of certiorari.

Respectfully Submitted,

/s/ Michael Ufferman

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