

CASE NO. 17-8892

IN THE UNITED STATES SUPREME COURT

RAYMOND MORRISON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

PAMELA JO BONDI
ATTORNEY GENERAL

Leslie Campbell*
Senior Assistant Attorney General
Florida Bar No. 0066631

Ilana Mitzner
Assistant Attorney General
Florida Bar No. 0087065

Office of the Attorney General
1515 North Flagler Drive, Suite 900
West Palm Beach FL 33402
Telephone: 561-837-5000
Facsimile: 561-837-5108
E-Service: capapp@myfloridalegal.com
Leslie.Campbell@myfloridalegal.com

COUNSEL FOR RESPONDENT

CAPITAL CASE

QUESTION PRESENTED FOR REVIEW

Whether this Court should grant review of the Florida Supreme Court's decision finding the defendant failed to establish prejudice under *Strickland on* Petitioner's guilt phase ineffective assistance of counsel claims where: 1) the post-conviction evidence supporting a challenge to Petitioner's confession on the basis of either intoxication or suggestiveness was weak and directly contradicted by Petitioner's suppression hearing testimony and would not have led to suppression of the confession; 2) post-conviction evidence of alibi and voluntary intoxication was so tenuous in contrast to the compelling evidence of guilt that it would not have led to a different outcome at trial, and; 3) these fact specific rulings do not conflict with any decision of this Court or another state supreme court or present an important or unsettled question of constitutional law?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
CITATION TO OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF CASE AND FACTS	1
REASONS FOR DENYING THE WRIT	20
THIS COURT SHOULD DENY REVIEW OF THE FLORIDA SUPREME COURT’S DECISION FINDING THE DEFENDANT FAILED TO ESTABLISH PREJUDICE UNDER <i>STRICKLAND ON</i> PETITIONER’S GUILT PHASE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WHERE: 1) THE POST-CONVICTION EVIDENCE SUPPORTING A CHALLENGE TO PETITIONER’S CONFESSION ON THE BASIS OF EITHER INTOXICATION OR SUGGESTIVENESS WAS WEAK AND DIRECTLY CONTRADICTED BY PETITIONER’S SUPPRESSION HEARING TESTIMONY AND WOULD NOT HAVE LED TO SUPPRESSION OF THE CONFESSION; 2) POST-CONVICTION EVIDENCE OF ALIBI AND/OR INTOXICATION WAS SO TENUOUS IN CONTRAST TO THE COMPELLING EVIDENCE OF GUILT THAT IT WOULD NOT HAVE LED TO A DIFFERENT OUTCOME, AND; 3) THESE FACT SPECIFIC RULINGS DO NOT CONFLICT WITH ANY DECISION OF THIS COURT OR ANOTHER STATE SUPREME COURT OR PRESENT AN IMPORTANT OR UNSETTLED QUESTION OF CONSTITUTIONAL LAW (RESTATED)	20
CONCLUSION.....	33
CERTIFICATE OF SERVICE	34

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Baker v. State</i> , 71 So.3d 802 (Fla. 2011)	15
<i>Bartlett v. Stephenson</i> , 535 U.S. 1301 (2002)	21
<i>Black v. State</i> , 630 So.2d 609 (Fla. 1st DCA 1993)	15
<i>Blake v. State</i> , 972 So.2d 839 (Fla. 2007)	15
<i>Blankenship v. Hall</i> , 542 F.3d 1253 (11th Cir. 2008)	26
<i>Colorado v. Connelly</i> , 479 U.S. 157 (1986)	24
<i>Gore v. State</i> , 846 So.2d 461 (Fla. 2003)	11
<i>Hall v. Thomas</i> , 611 F.3d 1259 (11th Cir. 2010)	31
<i>Harrington v. Richter</i> , 131 S.Ct. 770 (2011)	23
<i>Hurst v. State</i> , 18 So.3d 975 (Fla. 2009)	11
<i>Jackson v. Shanks</i> , 143 F.3d 1313 (10th Cir. 1998)	32
<i>McCloud v. State</i> , 208 So.3d 668 (Fla. 2016)	15
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	7
<i>Morrison v. State</i> , 818 So.2d 432 (Fla. 2002)	passim
<i>Owen v. State</i> , 862 So.2d 687 (Fla. 2003)	15
<i>Reaves v. State</i> , 942 So.2d 874 (Fla. 2006)	32
<i>Schoenwetter v. State</i> , 931 So.2d 857 (Fla. 2006)	15

<i>State v. Morrison</i> , 236 So.3d 204 (Fla. 2017)	passim
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	passim
<i>Walker v. State</i> , 957 So. 2d 560 (Fla. 2007)	25
<i>Wong v. Belmontes</i> , 558 U.S. ----, 130 S.Ct. 383, 175 L.Ed.2d 328 (2009)	22

Statutes

28 U.S.C. §1257	1
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Rules

Rule 10, Supreme Court Rules of Practice	20
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CITATION TO OPINION BELOW

The decision below is the Florida Supreme Court opinion reported as *State v. Morrison*, 236 So.3d 204 (Fla. 2017), reversing the trial court's decision to grant Raymond Morrison a new trial.

STATE OF JURISDICTION

Respondent acknowledges that this court has jurisdiction to review a final judgement by the highest court pursuant to 28 U.S.C. §1257. However, the Florida Supreme Court's decision does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a United States court of appeals, and does not conflict with relevant decisions of this Court. Sup. Ct. R. 10.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent, (hereinafter "State"), accepts as accurate Petitioner's (hereinafter "Morrison") recitation of the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CASE AND FACTS

Morrison is in state custody pursuant to a valid judgement for the first-degree murder of Albert Dwelle, ("Dwelle") which the Florida Supreme Court affirmed¹ on

¹ Also affirmed were convictions for armed robbery with a deadly weapon and burglary of a dwelling with intent to commit a battery, with an assault on Mr. Dwelle. *Morrison v. State*, 818 So.2d 432, 437 (Fla. 2002)

March 21, 2002. *Morrison v. State*, 818 So.2d 432 (Fla. 2002), *cert denied*, *Morrison v. Florida*, 537 U.S. 957 (2002). On direct appeal, the court found the following facts:

Raymond Morrison, Jr. was charged with first-degree murder for the January 8, 1997, killing of Albert Dwelle, which occurred during the course of a robbery upon Dwelle in his apartment in Duval County. Morrison was also charged with armed robbery with a deadly weapon and burglary of a dwelling with intent to commit a battery, with an assault or battery on Dwelle.

The evidence presented at trial revealed the following facts. On January 9, 1997, the dead body of eighty-two-year-old Dwelle was found on the floor of his bedroom by service personnel from Meals on Wheels. An autopsy revealed numerous injuries on the body of Dwelle, including contusions and abrasions to the head, chest, arms, and hand. According to the medical examiner, Dwelle died from loss of blood due to two lethal knife wounds to the throat. One was a stab wound to the left side of the neck which penetrated to the depth of almost five inches, perforating the esophagus and nicking the cervical vertebrae. A second wound to the neck was described as an incised wound across the front of the throat. As a consequence, Dwelle aspirated the blood caused by the knife wounds to his neck.

Dwelle was disabled for many years, having suffered a stroke during a bout of typhoid fever at age six or seven. He could not use his left hand or arm, he could hardly stand up and walk, and he needed assistance to bathe, dress, and cook. Meals on Wheels delivered his meals once a day.

Investigation by police revealed that Morrison had visited his girlfriend, Sandra Brown, on January 8, 1997. Brown lived at the Ramona Apartments in an upstairs apartment directly across from Dwelle's apartment. Morrison spent the afternoon of January 8, 1997, socializing

with Brown and her uncle at Brown's apartment. At some point in the late afternoon or early evening, Brown and Morrison walked to the local convenience store to buy some beer. Brown paid for the beer with money she had just received for babysitting. To her knowledge, Morrison did not have any money. They returned to Brown's apartment where they drank the beer with Brown's uncle. Brown's uncle later left to return to his own home. At about 9 p.m., Morrison prepared two steaks and placed them in the oven to cook. He then told Brown that he was going to take the trash out. He did not return to Brown's apartment and was not seen again by Brown until the next day at a different location. On that occasion, Morrison apparently avoided contact with Brown, who was attempting to talk to him to find out why he had left so abruptly the previous night.

Morrison was arrested on January 10, 1997, by Officer Anthony Richardson, on a warrant for failure to pay child support. Immediately upon arrest, Morrison asked Richardson if "this [his arrest] was about that old man." Richardson told him that he was being arrested for failure to pay child support but that some homicide detectives also wanted to talk to him, so Richardson was taking him to the homicide office of the Jacksonville Sheriff's Office. Richardson then advised Morrison of his constitutional rights. Morrison learned that Richardson, in addition to being a police officer, was also a pastor in a local church. On the way to the police station, Morrison and Richardson discussed religion and Morrison's need to get his life in order. Richardson then turned Morrison over to homicide detectives Terry Short and T.C. Davis.

During a lengthy interview about the Dwelle murder, Morrison told Short that he wanted to talk to Richardson again. Short paged Richardson and Richardson returned to the police station to talk with Morrison. On the morning of January 11, 1997, and following a discussion with Richardson, Morrison gave a written statement detailing his involvement in the death of Albert Dwelle. The text of Morrison's written statement seen by jurors is as follows:

On Wednesday 01-08-97 at approximately 9:00 PM I had

been smoking crack with Big Man. I ran out of crack and had no money. I went to Apt. 68 and sat on the steps. I was drinking a beer. I wanted a cigar. I knocked on the door of Apt. # 64. The man came to the door and I ask him for a cigar. He started telling me he couldn't let me come in. I ask for a light for the cigar he gave me. He went back into his bed room to get me a light. I follow him to the bed room. He reached into his shirt pocket hanging on a chair by the bed and handed me a light. I put the lighter back on the chair. I saw money in the shirt pocket. I reached over and grabbed a few bills out of his shirt pocket. He saw me take the money. He got a knife from somewhere and began swinging it at me. I tried to grab him to defend myself and also not to hurt him. I grabbed him by the arm and turned him around so he was facing away from me. He was thrusting the knife back over his shoulders at me. I was holding his right arm and he was still thrashing the knife trying to cut me. While he was trying to cut me the knife accidentally cut across his throat. I didn't know at the time that it had cut him. I was still holding him and he got even wilder thrusting the knife and I guess he got cut again. That's when I saw he was cut.

I laid him down on the floor and picked up the knife. I left the apartment and went to another part of the complex where I hid the knife under a brick.

I then went to Big Mans house and got him to take me to the Chevron. We got gas and he took me to Marietta. When we got to Marietta I bought some drugs with the money I took from the old man. I then went back to Ramona Park where Big Man dropped me off and he went home. I saw my uncle Cap and I got in the car with him. I stayed with Cap until Friday morning and continued smoking dope and drinking till then. Police picked me up Friday after noon.

Morrison also said he took the victim's money and spent it on drugs and prostitutes. In addition, Morrison was seen shortly after the murder attempting to sell silver coins, similar in size and appearance to coins owned by Dwelle and missing from Dwelle's apartment after the murder. Finally, Morrison led the detectives to the knife that he said he used to kill the victim.

On September 25, 1998, the jury found Morrison guilty as charged. After penalty proceedings, the same jury returned a recommendation of death by a vote of twelve-to-zero. The court sentenced Morrison to death for the first-degree murder, and on the other charges found Morrison to be a habitual violent felony offender and sentenced him on each count to life imprisonment, including a minimum mandatory term of fifteen years, to be served consecutively. The court found five aggravating circumstances but said it weighed four: (1) Morrison had prior violent felonies for a 1988 conviction of attempted robbery and a 1991 conviction of aggravated battery, given "great weight"; (2) the murder was committed during a robbery and burglary with assault, given "great weight"; (3) the murder was committed for pecuniary gain, which had no weight because it merged with the murder committed during a robbery aggravator; (4) the murder was heinous, atrocious, or cruel, given "great weight"; and (5) the victim was particularly vulnerable due to advanced age and disability, given "great weight".

Although the court found no statutory mitigating circumstances, it did find and weigh eight nonstatutory mitigators: (1) good jail conduct in that Morrison presented no danger to the police when arrested, cooperated with the police during his detention, and led police to the murder weapon, given "some weight"; (2) there would be no parole or other release from prison from a life sentence for first-degree murder, given "some weight"; (3) Morrison cooperated with the police, given "some weight"; (4) Morrison abused alcohol and cocaine and most likely used the robbery proceeds to purchase more alcohol and cocaine, accorded "some weight"; (5) Morrison was employed, accorded "some weight"; (6) Morrison has only borderline intellectual ability, and when

combined with alcohol and drug abuse, it results in bad judgment, accorded “great weight”; (7) Morrison has a positive family background and character, and assumed some responsibility for management of the home at an early age, accorded “some weight”; and (8) Morrison adjusted well to incarceration, albeit with a record of an escape conviction, given “some weight.” Morrison timely filed this appeal.

Morrison, 818 So.2d at 437-440.

Following the denial of certiorari, on September 18, 2003, Morrison sought collateral relief in state court. On March 28, 2014, Morrison filed an amended post-conviction motion raising eleven claims with multiple sub-claims. The trial court granted an evidentiary hearing, which included ineffective assistance of counsel during the suppression hearing and guilt phase.

During the suppression hearing in 1997, Morrison challenged the confession on the grounds he did not confess and the police refused to give him an attorney. On direct appeal, the Florida Supreme Court found unpreserved the claim the confession should have been suppressed as it was given after the police obtained the confession only after making “illicit appeals” to Morrison’s religious beliefs. This Court found that Morrison had testified that he had not confessed; and did not make a finding of fundamental error. *Morrison*, 818 So.2d at 446.

Morrison’s testimony during the suppression hearing was a strong impediment to any later claim that he was intoxicated at the time he made the statement. Morrison testified that he was arrested at about 3:30 P.M. and that he

last had any drugs or alcohol at 2:30 A.M. on the morning of his arrest (some 13 hours before). (ROA.8 1392, 1405). With respect to the effects of smoking crack cocaine, Morrison stated he did not know how long the effects take to wear off, but it does not take 13 hours. (ROA.8 1409-10). He admitted being given his Miranda² rights, but testified that he told the police immediately he did not want to talk and wanted to call his father to get a lawyer. Throughout his direct examination, Morrison maintained that he reiterated to the police that he did not want to talk to them (ROA.8 1394-96, 1401-02, 1404-06). Morrison stated that he understood he could have a lawyer appointed to him at no cost. (ROA.8 1394-95). It was Morrison's testimony he was read his rights upon his arrest and that the detective reviewed them with the written Miranda form which he signed acknowledging that he understood his rights and that he did not have to talk to anyone. (ROA.8 1406, 1408). On cross examination, Morrison testified that he signed a confession, but that he didn't read it. He maintained that he did not answer any questions.³

Morrison's own testimony at the suppression hearing is diametrically opposite of this newest theory of defense offered during the post-conviction hearing. His post-conviction theory was that counsel was ineffective for failing to challenge his confession on the basis that Morrison was intoxicated when he made his statement.

² Miranda v. Arizona, 384 U.S. 436 (1966)

³ Morrison did not testify during the post-conviction evidentiary hearing.

Morrison's argument also averred that counsel was deficient for not putting on evidence of alleged mental deficiencies. However, Morrison's testimony at the time of the trial was that he knew his rights, averred that he had asked to call his father, told the police he did not want to talk, and testified that he did not confess.

Judge Henry Davis presided over Morrison's trial and postconviction litigation. Following the suppression hearing, the trial court found that Morrison testified that "he had [last] consumed alcohol and cocaine at 2:30am, which was about 13 hours prior to his arrest at 3:30pm; Morrison "was not threatened"; Morrison was advised of *Miranda* Rights by Officer Richardson; Officer Short also advised Morrison of *Miranda* rights; Morrison refused to speak with Officer Davis; Morrison requested to speak with Officer Richardson again; after requesting to be taken to jail, Morrison "called him [Richardson] back in to talk"; Richardson honored the confidentiality of Morrison's communications at this juncture; Morrison agreed to speak to officer Short, who again reminded Morrison of his *Miranda* rights; and then, Morrison made the statement, which included seeking to steal money from the victim and claiming that the victim's throat being accidentally cut twice during their struggle; Morrison led the police to the knife (ROA.5 801).

Also, Judge Davis found Morrison had waived his *Miranda* rights "knowingly and voluntarily"; Morrison's consumption of alcohol and cocaine "does not support a finding that he was under the influence at pertinent times, including at the time he

gave his statements almost 24 hours after his last consumption; and, Morrison's behavior was "sober and rational".

At the postconviction evidentiary hearing, Petitioner offered the testimony of Dr. Eisenstein in support of his claim that his confession was involuntary due to intoxication or suggestiveness. Dr. Eisenstein noted Morrison had a significant substance abuse problem, suffered head injuries, and had been born prematurely which might be a source of organic brain damage ("OBD") and was intellectually disabled. Dr. Eisenstein also suggested that the OBD limited Morrison's cognitive flexibility and ability to plan. The doctor questioned Morrison's ability to make independent decisions.⁴

Dr. Prichard, the State's expert, acknowledged Morrison's substance abuse problem, but otherwise, disputed Morrison's experts' findings. Dr. Prichard testified that the record negated adaptive functioning deficits and opined that Morrison was not intellectually disabled. The record indicated Morrison had an \$800 per/day drug habit and Dr. Prichard stated that Morrison needed to be fairly resourceful to support such a drug habit.

Joseph Turner, a convicted felon twelve times over, testified that Morrison

⁴Petitioner also called Dr. Wu who administered a PET scan and found Morrison had abnormal brain metabolism. Dr. Wu found an abnormal pattern in Morrison's frontal lobe often seen in those who have sustained a head injury.

had confessed to other crimes he did not commit. According to Delores Tims, Morrison smoked crack at the time of his arrest and that Officer Richardson allowed that to occur. Raymond Seels testified Morrison was with him the night Seels shot a man at a bar and that Morrison ran from the scene with him.

On September 18, 2015, the trial court granted relief finding ineffective assistance of counsel during the suppression hearing, guilt, and penalty phases. The State appealed⁵ and the Florida Supreme Court found that the trial court erred in granting relief on Morrison's ineffective assistance of counsel claims regarding his written statement to the police and trial counsel's guilt phase investigation. *State v. Morrison*, 236 So.3d 204, 212-218 (Fla. 2017).⁶ The court found that the trial court failed to conduct a proper *Strickland v. Washington*, 466 U.S. 668 (1984) analysis:

**A. Ineffective Assistance of Counsel Regarding Morrison's
Written Statement to the Police**

The first issue presented in the State's appeal is whether the postconviction court erred in finding that trial counsel Ronald Higbee and Refik Eler were ineffective for failing to adequately challenge the voluntariness and reliability of Morrison's written statement to the police detailing his involvement in the death of the victim. Specifically, the

⁵ Morrison cross-appealed claiming that the trial court erred in (1) denying his *Brady* violation claim, (2) denying his newly discovered evidence claim, (3) denying his intellectual disability claim, and (4) denying a cumulative error claim. The Florida Supreme Court affirmed the trial court's decisions regarding these claims. *State v. Morrison*, 236 So.3d 204, 222-226 (Fla. 2017)

⁶ The Florida Supreme Court affirmed the trial court's decision granting Morrison a new penalty phase, finding that there was ineffective assistance of counsel during the penalty phase. *Morrison*, 236 So.3d at 218-222.

postconviction court found that trial counsel were deficient for failing to investigate Morrison's: (1) mental health at the time of the interrogation through mental health experts; (2) crack cocaine use within hours of his interrogation; and (3) propensity to take the blame for crimes he did not commit. The postconviction court further found that the failure to present such evidence at the motion to suppress hearing and the guilt phase resulted in prejudice. As explained below, the postconviction court erred in granting relief on Morrison's ineffective assistance of counsel claim regarding his written statement to the police.

In order to obtain relief on a claim of ineffective assistance of counsel, "a defendant must establish deficient performance and prejudice." *Gore v. State*, 846 So.2d 461, 467 (Fla. 2003). Under the first prong, "the defendant must show that ... counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* at 689, 104 S.Ct. 2052. "[I]t is axiomatic that 'counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.'" *Hurst v. State*, 18 So.3d 975, 1008 (Fla. 2009) (quoting *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052). Under the second prong, "[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." *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052.

It is not enough for the defendant to show that

the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, ... and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding.

Id. at 693, 104 S.Ct. 2052. “Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.” *Id.* at 687, 104 S.Ct. 2052.

Prior to the guilt phase, Morrison filed motions to suppress his statements to police as well as evidence discovered as the result of the interrogation by police about the victim's murder. Morrison contended that the interrogation by Detectives Short and Davis was unconstitutional because it continued after Morrison invoked his right to silence and his right to counsel and because his statements were obtained as the result of coercion, including the State's improper use of religion. An evidentiary hearing was conducted on November 13, 1997, regarding Morrison's motions to suppress. Morrison, Officer Richardson (a police officer and a pastor), Detective Short, Detective Davis, and Georgia Morrison (Morrison's mother) testified at the hearing, and Morrison and the State later introduced a stipulation regarding the testimony that Reginald “Fred” Austin (Morrison's uncle) would have presented at the hearing. Morrison testified at the hearing that he knew and understood his rights at the time of the interrogation and that he did not have any drugs or alcohol for thirteen hours prior to his arrest. Detectives Davis and Short testified at the hearing that they did not detect that Morrison was impaired or under the influence of alcohol or drugs at the time of his interview.

The trial court subsequently issued its order denying the motion to suppress statements made to Detective Short

(which included Morrison's written statement to the police), granting the motion to suppress statements made to Officer Richardson, and denying the motion to suppress the physical evidence. The trial court found in its order that Morrison never asked for an attorney, Morrison did not state or indicate that he did not wish to talk to Detective Short, the statements made to Detective Short were not the product of intimidation, Morrison gave the statements almost twenty-four hours after he last consumed alcohol or cocaine, and Morrison's behavior from the time of his arrest to the time he gave the statements showed that he was sober and rational. The trial court further found that the statements were made after a valid waiver of Miranda rights.

At the postconviction evidentiary hearing, Morrison presented the expert testimony of Dr. Hyman Eisenstein and Dr. Joseph Wu to address, in part, his mental health at the time of the interrogation. Dr. Eisenstein, a neuropsychologist, diagnosed Morrison with organic brain damage, intellectual disability, and a substance abuse disorder. Dr. Eisenstein found that Morrison's substance abuse, brain injuries, and premature birth contributed to his organic brain damage. Dr. Eisenstein also concluded that Morrison's substance abuse impairs his cognitive abilities and that Morrison would admit to crimes he did not commit. Dr. Wu, a psychiatrist, testified regarding a PET scan of Morrison's brain and found that he had abnormal brain metabolism consistent with someone who likely has significant impairment on IQ. Dr. Wu also found that Morrison had an abnormal pattern to his frontal lobe consistent with a head injury. Morrison presented the testimony of Delores Tims (Morrison's acquaintance) in support of his crack cocaine use within hours of his interrogation. Tims testified that Morrison was using crack cocaine at the time of his arrest on January 10, 1997. Morrison also presented the testimony of Joseph Turner (Morrison's friend) and Terry Heatly (Morrison's cousin) in support of his propensity to take the blame for others' crimes. Turner testified that Morrison previously

“confessed to a crime [he] did not commit,” and Heatly testified that Morrison “would hold drugs for drug dealers and admit the drugs were his when the police came around.”

We conclude that the postconviction court's finding of prejudice conflicts with the legal standard for prejudice established in *Strickland*. As explained previously, the postconviction court found that trial counsel were deficient for failing to investigate Morrison's mental health at the time of the interrogation, crack cocaine use within hours of his interrogation, and propensity to take the blame for crimes he did not commit. The postconviction court ultimately concluded that Morrison was prejudiced by trial counsels' deficient performance because “[i]t is reasonable to find this evidence, had it been presented, could have changed the outcome of the proceedings.” (Emphasis added.) However, the postconviction court's finding of prejudice is inconsistent with the second prong of *Strickland*, which requires “[t]he defendant [to] show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052 (emphasis added). *Strickland* defined “a reasonable probability” as “a probability sufficient to undermine confidence in the outcome.” *Id.*

The postconviction court did not determine whether the evidence presented at the postconviction evidentiary hearing would have led the trial court to suppress or the jury to disregard Morrison's written statement to the police had that evidence been presented at the motion to suppress hearing and the guilt phase. Therefore, before considering whether Morrison was prejudiced under *Strickland* by trial counsels' alleged deficient performance, we first determine whether Morrison has shown that the presentation of such evidence at the motion to suppress hearing and the guilt phase would have led the trial court to suppress or the jury to disregard Morrison's written

statement.

Morrison has not shown that the evidence presented at the postconviction evidentiary hearing would have led the trial court to suppress or the jury to disregard Morrison's written statement to the police as involuntary. "In examining whether a defendant's confession may be used as evidence against him, '[t]he test is ... one of voluntariness, or free will, which is to be determined by an examination of the totality of the circumstances surrounding the confession.' " *Baker v. State*, 71 So.3d 802, 814 (Fla. 2011) (alterations in original) (quoting *Owen v. State*, 862 So.2d 687, 695 (Fla. 2003)). "Moreover, '[t]o establish that a statement is involuntary, there must be a finding of coercive police conduct.'" *Id.* (alteration in original) (quoting *Schoenwetter v. State*, 931 So.2d 857, 867 (Fla. 2006)). "Thus, whether a confession is admissible depends on (1) whether the interrogating officers engaged in coercive activity, and (2) whether that activity was sufficient to overcome the free will of the defendant." *Id.* "[T]he salient consideration in an analysis of the voluntariness of a confession is whether a defendant's free will has been overcome." *Blake v. State*, 972 So.2d 839, 844 (Fla. 2007) (alteration in original) (quoting *Black v. State*, 630 So.2d 609, 614–15 (Fla. 1st DCA 1993)). The ultimate issue of voluntariness is a legal rather than factual question. *McCloud v. State*, 208 So.3d 668, 677 (Fla. 2016).

A review of the totality of the circumstances here confirms that Morrison voluntarily gave the written statement to the police. Morrison's written statement was not the product of improper coercion. Morrison was not threatened or mistreated during the interrogation, and the police did not make any promises to Morrison in exchange for his written statement. Although the police appealed to Morrison's religious beliefs, we conclude that their appeals were not so coercive as to render his written statement involuntary. As the trial court found following the motion to suppress hearing, Morrison gave the written statement after validly

waiving his Miranda rights. Morrison was advised of his Miranda rights at the time of arrest. Morrison was also advised of his Miranda rights when he arrived at the police station. At that time, Morrison signed a standard form attesting to the fact that he had been advised of his Miranda rights. Morrison was also reminded of his Miranda rights before he gave the written statement to the police. Although Morrison presented testimony at the postconviction evidentiary hearing regarding his mental health, the evidence is that Morrison clearly knew and understood his rights at the time of the interrogation, and Morrison has not shown otherwise. Morrison never asked for an attorney or stated or indicated that he did not wish to talk to Detective Short. Even accepting Tims' testimony, Morrison gave the written statement at least ten hours after he last consumed alcohol or cocaine and Morrison's behavior from the time of his arrest to the time he gave the written statement showed that he was sober and rational. Morrison never testified at the motion to suppress hearing or at the postconviction proceedings that he confessed to the police and was taking the blame for others, which would have contradicted his own testimony at the motion to suppress hearing that "he did not provide any inculpatory statements to [the] police." *Morrison*, 818 So.2d at 446. In any event, the testimony presented at the postconviction evidentiary hearing regarding Morrison's purported propensity to take the blame for others' crimes does not establish that Morrison did so in this case or render Morrison's written statement involuntary under the totality of the circumstances presented.

Nor has Morrison shown that the evidence presented at the postconviction evidentiary hearing would have led the jury to disregard his written statement as unreliable. Morrison's written statement established that he knew the location of the murder weapon, which is consistent with the significant fact that "Morrison led the detectives to the knife that he said he used to kill the victim," *id.* at 439, and the State presented evidence at trial that blood located on the blade of the knife matched the DNA of the victim.

Morrison's written statement established that he knew that the victim's throat was sliced and stabbed with the victim's own knife, which was consistent with the evidence presented at trial. *See id.* at 437–39, 452. Morrison's written statement indicated that he went to the victim's apartment sometime after 9 p.m. on January 8, 1997. *See id.* at 438. Consistent with the written statement, Sandra Brown (Morrison's girlfriend) placed Morrison near the scene of the crime on the night of the murder. *See id.* Morrison's written statement also indicates that he stole money from the victim, which is consistent with the fact that “Morrison was seen shortly after the murder attempting to sell silver coins, similar in size and appearance to coins owned by [the victim] and missing from [the victim's] apartment after the murder.” *Id.* at 439. Furthermore, immediately upon arrest, Morrison asked if the arrest “was about that old man.” *Id.* at 438.

Under these circumstances, Morrison cannot demonstrate prejudice such that our confidence in the outcome is undermined. We therefore reverse the postconviction court's granting of a new guilt phase on this issue.

B. Ineffective Assistance of Counsel Regarding Trial Counsel's Guilt Phase Investigation

The second issue presented in the State's appeal is whether the postconviction court erred in finding that trial counsel Eler was ineffective for failing to adequately investigate and prepare for the guilt phase. Specifically, the postconviction court found that trial counsel was deficient for failing to adequately investigate: (1) an alibi defense; (2) the State's timeline; (3) a voluntary intoxication defense; and (4) the victim's relationship with Brown. Of these four subclaims, the postconviction court only found that trial counsel's failure to present evidence at the guilt phase regarding the voluntary intoxication defense resulted in prejudice. We conclude that the postconviction court erred in granting relief on Morrison's ineffective assistance of counsel claim regarding trial counsel's guilt

phase investigation.

At the postconviction evidentiary hearing, Morrison presented the testimony of Raymond Seels (Morrison's friend), Gilda "Gillis" Payton (Morrison's friend), Austin, and Charlene Wright (Morrison's acquaintance) in support of his alibi defense. These witnesses testified that they saw Morrison in Marietta at or about the time Brown placed Morrison at the scene of the crime. In order to challenge the State's timeline, Morrison presented evidence that Isaia Medina (the victim's neighbor) heard noises "like a chair or piece of furniture being moved" coming from the victim's apartment prior to the murder at approximately 7 p.m. rather than 9 p.m. Morrison presented the testimony of a number of witnesses in support of his voluntary intoxication defense. Austin, Payton, Tangy Allen (Morrison's former fiancée), Turner, Heatly, and Raymond Morrison, Sr. (Morrison's father), collectively testified that Morrison used alcohol and drugs on January 8, 1997, and had a history of alcohol and drug abuse. Dr. Eisenstein diagnosed Morrison with a substance abuse disorder and opined that Morrison's substance abuse compromised his cognitive abilities. Finally, in order to challenge the victim's relationship with Brown, Morrison presented the testimony of Tims and Wright. Tims testified that Brown exchanged sexual favors with the victim in return for beer and cigarettes, and Wright testified that Brown used to buy beer and cigarettes for the victim.

We conclude that the postconviction court failed to conduct a proper Strickland analysis. As explained previously, the postconviction court found that trial counsel was deficient for failing to adequately investigate an alibi defense, the State's timeline, a voluntary intoxication defense, and the victim's relationship with Brown. The postconviction court only found that trial counsel's failure to present evidence at the guilt phase regarding the voluntary intoxication defense resulted in prejudice. Nevertheless, the postconviction court granted

Strickland relief on all four subclaims even though it did not make a finding of Strickland prejudice regarding three of the subclaims. The postconviction court's Strickland analysis also failed to take into consideration Morrison's written statement to the police. As explained previously, the postconviction court erred in granting relief on Morrison's ineffective assistance of counsel claim regarding his written statement to the police.

Regardless, even assuming that trial counsel's investigation was deficient, Morrison has failed to demonstrate prejudice because there is no reasonable probability that the presentation of the alibi witnesses, evidence that Medina heard noises coming from the victim's apartment before the murder, evidence that Morrison used alcohol and drugs on the day of the murder and had a history of alcohol and drug abuse that compromised his cognitive abilities, and evidence that Brown may have had a relationship with the victim would have created a different result at trial. Given the evidence presented at trial, including Morrison's written statement to the police, Morrison cannot demonstrate prejudice such that our confidence in the outcome is undermined.

Accordingly, we reverse the postconviction court's granting of a new guilt phase on this issue.

Id. This petition for certiorari followed.

REASONS FOR DENYING THE WRIT

THIS COURT SHOULD DENY REVIEW OF THE FLORIDA SUPREME COURT'S DECISION FINDING THE DEFENDANT FAILED TO ESTABLISH PREJUDICE UNDER *STRICKLAND ON* PETITIONER'S GUILT PHASE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WHERE: 1) THE POST-CONVICTION EVIDENCE SUPPORTING A CHALLENGE TO PETITIONER'S CONFESSION ON THE BASIS OF EITHER INTOXICATION OR SUGGESTIVENESS WAS WEAK AND DIRECTLY CONTRADICTED BY PETITIONER'S SUPPRESSION HEARING TESTIMONY AND WOULD NOT HAVE LED TO SUPPRESSION OF THE CONFESSION; 2) POST-CONVICTION EVIDENCE OF ALIBI AND/OR INTOXICATION WAS SO TENUOUS IN CONTRAST TO THE COMPELLING EVIDENCE OF GUILT THAT IT WOULD NOT HAVE LED TO A DIFFERENT OUTCOME, AND; 3) THESE FACT SPECIFIC RULINGS DO NOT CONFLICT WITH ANY DECISION OF THIS COURT OR ANOTHER STATE SUPREME COURT OR PRESENT AN IMPORTANT OR UNSETTLED QUESTION OF CONSTITUTIONAL LAW? (RESTATED)

Morrison asserts that the Florida Supreme Court's reversal of the trial court's decision granting post-conviction relief was based on flawed legal and factual analysis. However, Morrison's petition fails to present either a conflict with this Court's precedent, or with any other state supreme court. Furthermore, Morrison does not assert that his case presents an important or unsettled issue of law. *See* Rule 10, Supreme Court Rules of Practice and Procedure (Certiorari review appropriate for case which decides an "important question of federal law" which represents a

conflict with relevant decisions of this Court, between United States Courts of Appeal, among state courts of last resort, or, presents “a significant unsettled question” for this Court). Accordingly, there is clearly no basis for certiorari review of the decision below. *See Bartlett v. Stephenson*, 535 U.S. 1301, 1304 (2002) (issues with few, if any, ramifications beyond the presenting case do not satisfy any of the criteria for exercise of certiorari jurisdiction); *United States v. Johnston*, 268 U.S.220, 227 (1925) (“We do not grant certiorari to review evidence and discuss specific facts.”).

Petitioner has not established any reason for this Court to grant review of these fact-specific claims. Rather, his real complaint is in the manner in which the lower court applied *Strickland* after a post-conviction hearing in state court. Such assertions merely implicate an alleged “misapplication of a properly stated rule of law ” Sup. Ct. R. 10. Accordingly, certiorari review should be denied. Further, a fact intensive review of the evidence and opinion below, such as Petitioner seeks here, would not alter the outcome. Because no fairly debatable constitutional question has been presented, this Court should deny review of the instant case.

Morrison takes issue with the denial of his claim that trial counsel was ineffective during the suppression hearing and guilt phase. Morrison argues that the Florida Supreme Court erred in its application of *Strickland* because it utilized an outcome determinative analysis. Specifically, Morrison asserts that the court’s

decision requires Morrison to establish that the trial judge would have suppressed the statement or the jury would not have considered it because the statement was not voluntary, rather than needing to demonstrate only that confidence in the voluntariness of Morrison's confession is undermined. Contrary to Morrison's assertions, the Florida Supreme Court applied *Strickland* correctly when it found that the trial court's ruling conflicted with the legal standard of prejudice established by *Strickland*. The Florida Supreme Court did not use an outcome determinative analysis in reaching its decision.

Strickland clearly states that a 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." *Strickland*, 466 U.S. at 694 (emphasis added). Further, *Strickland* defines a "reasonable probability" as a "probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In discussing the *Strickland* prejudice prong, this Court has stated:

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. See *Wong v. Belmontes*, 558 U.S. ----, ----, 130 S.Ct. 383, 390, 175 L.Ed.2d 328 (2009) (per curiam) (slip op., at 13); *Strickland*, 466 U.S., at 693, 104 S.Ct. 2052. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.*, at 696, 104 S.Ct. 2052. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693, 697, 104 S.Ct. 2052. The likelihood of a different

result must be substantial, not just conceivable. *Id.*, at 693, 104 S.Ct. 2052.

Harrington v. Richter, 131 S.Ct. 770, 791-92 (2011). The trial court found that the evidence presented by Morrison at the evidentiary hearing **could** have changed the outcome of the proceedings. The trial court's decision is inconsistent with the standard this Court established in *Strickland* such that the trial court did not determine whether the evidence presented at the evidentiary hearing **would** have led the trial court to suppress or the jury to disregard Morrison's confession. *Morrison*, 236 So.3d at 214-215. Thus, the Florida Supreme Court's rejection of the trial court's ruling is not contrary to *Strickland* and its progeny, but instead applied the law properly.

Morrison also asserts that the Florida Supreme Court failed to consider the evidence and testimony presented at the evidentiary hearing which Morrison claims significantly undermines the evidence presented at trial and rebuts the trial court's opinion. Again, Morrison's assertion is incorrect. *Strickland* states:

In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge and 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 the burden showing that the decision reached would reasonably likely have been different absent these errors.

Strickland, 466 U.S. at 695-696. In conducting its own analysis, the Florida Supreme Court reviewed the totality of the circumstances and ruled that Morrison voluntarily gave his written statement. *Morrison*, 236 So.3d at 215. In reaching its determination, the court considered the evidence presented at the suppression hearing, trial, and the post-conviction evidentiary hearing.

In post-conviction, Morrison repackaged his trial claim of coercion and lack of voluntariness by claiming his substance abuse, brain damage, drug usage before the arrest, and propensity to take the blame for others rendered his confession involuntary and untruthful. With regards to the voluntariness of the statement, the court found that there was no coercion and Morrison validly waived his *Miranda* rights. *Id.* at 216. Morrison was not threatened or mistreated and was repeatedly reminded of his rights. The police did appeal to his religious beliefs, but this was not so coercive as to render his statement involuntary. *Id.* See *Colorado v. Connelly*, 479 U.S. 157, 167 (1986) (opining “Coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.”).

At the evidentiary hearing, Morrison presented two experts who testified that Morrison had a significant substance abuse problem. However, neither opined on

the quantity of drugs ingested and whether that amount would render Morrison's statement involuntary. In a light best for Morrison, his experts simply suggested there were some unquantifiable possibility, that Petitioner's statement could have been affected by consumption of drugs.⁷ Fatal to his claim, Morrison offered no evidence or testimony about how much crack cocaine and/or alcohol he consumed on the day of the murder or on the day of his arrest. In fact, his suppression hearing testimony forecloses any the instant claim.

Morrison's suppression hearing testimony that he did not confess to the police circumscribed counsel's actions from that point forward. The fact that Morrison told the trial court that he did not confess, but instead asked to call an attorney, rendered his mental abilities irrelevant. Morrison has not offered what foundation could be laid for admission of his alleged mental abilities at the suppression hearing or at the 1998 trial when he testified he did not confess and that his drug experience was that the effects of cocaine did not last 13 hours.⁸ *See Strickland*, 466 U.S. at 691, 104

⁷ In any case, a confession is not involuntary due to intoxication unless a defendant is so very intoxicated that it amounts to mania or obvious incoherence. The record, and, Petitioner's suppression testimony refute any suggestion of obvious incoherence; any such challenge to his confession on those grounds would be frivolous. *See Walker v. State*, 957 So. 2d 560, 575-576 (Fla. 2007)(stating "while there is some evidence that Walker was under the influence of drugs, likely methamphetamine and cocaine, at the time of his arrest, the officers who actually took Walker's statement testified that Walker appeared coherent and forthcoming in his responses.")

⁸ Following the suppression hearing, the trial court entered a detailed order finding Morrison testified "he had [last] consumed alcohol and cocaine at 2:30am, which

S.Ct. at 2066 (reaffirming “when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel’s failure to pursue those investigations may not later be challenged as unreasonable.”); *Blankenship v. Hall*, 542 F.3d 1253, 1276 (11th Cir. 2008)(noting “petitioner is often in the best position to inform his counsel of salient facts relevant to his defense”). Moreover, if such a strategy were pursued at re-trial, Morrison would run the risk of being cross-examined on his suppression hearing testimony where he would have to explain his prior testimony that he had not confessed and would not have been under the effects of intoxicants post-arrest. Morrison has not addressed this conundrum; how to put his mental health and the voluntariness of the confession at issue before the jury without admitting he lied previously when he claimed not to have confessed to the police.

With respect to the trial court’s treatment of the claim that counsel should have brought forward evidence that Morrison had taken the blame for others, the evidence is again lacking. Morrison did not testify during the post-conviction hearing, thus, there was no evidence to support a post-conviction finding that he took the blame for crimes committed by others. Moreover, the mere fact that Morrison may have confessed previously to crimes committed by others is not proof that his

was about 13 hours prior to his arrest at 3:30pm; Morrison “was not threatened;” and he was advised of his *Miranda* rights by the police (Direct Appeal Record vol. 5 797-98).

confession was false here or that he is not guilty of killing Mr. Dwelle. Also, there is no evidence of police coercion. The trial court's finding that Morrison's alleged propensity to confess for others "could have aided the jury" is not the standard under *Strickland*. Instead, the defendant must prove that counsel's performance fell below the standard guaranteed by the Sixth Amendment, and that but for the alleged deficiency, there is a reasonable probability that the result of the proceedings would have been different. *Strickland*, 466 U.S. at 688-89. When considering this, there is a strong presumption that counsel rendered effective assistance. Morrison has the burden to show a false confession bearing in mind such a claim would open the door to a prosecution response that could detail Morrison's prior testimony regarding his police statement and criminal history. Opening the door to such harmful information would auger against such a strategy.

Turning to the impact the evidence presented at the evidentiary hearing would have had on the jury, the Florida Supreme Court determined that the evidence was insufficient for the jury to disregard Morrison's written police statement. Morrison argues that the court merely regurgitated severely weakened evidence and only relied on selective evidence. Morrison misreads the court's decision. The Florida Supreme Court weighed the evidence at trial against the evidence presented at the post-conviction hearing to determine whether Morrison demonstrated sufficient prejudice to undermine confidence in the outcome. The court then determined that

the evidence presented at the evidentiary hearing would not have led the jury to disregard the written confession as unreliable. Morrison's confession established that he knew where the murder weapon could be found and that Dwelle's throat was sliced with the victim's knife. Also, Morrison's explanation that he held Dwelle's right arm as the knife was pulled across his throat is consistent with the forensic evidence that Dwelle was cut from behind, had abrasions and bruises on his arms and neck and chin from the struggle, and that the perpetrator may not have had blood on him as neither the jugular nor carotid vessels were cut. Shortly after the murder, Morrison was seen trying to sell silver coins that were similar in size to the ones stolen from Dwelle. This is consistent with Morrison's written statement, which indicates that he stole money from Dwelle. *Morrison*, 236 So.3d at 217.

Moreover, the assertion that Morrison falsely took the blame for another is refuted in part by Sandra Brown's ("Brown") testimony. First, Morrison did not establish that Brown would change her sworn trial testimony, thus, that remains unassailed testimony for the jury. Her trial testimony established that Dwelle's apartment was directly across the hall from her unit and that Morrison was with her the afternoon and evening of January 8, 1997. She testified that near 8:00 or 9:00 PM Morrison put on some steaks to cook then announced he would be taking out the trash. Morrison never returned. Again, Brown has not recanted that account.⁹

⁹ Sandra Brown did not testify at the evidentiary hearing.

Morrison further claims that the Florida Supreme Court conducted an outcome determinative analysis in reviewing his guilt phase ineffective assistance of counsel claim. Morrison asserted below that counsel rendered ineffective assistance for failing to investigate and present: (1) an alibi defense; (2) challenges to the State's timeline; (3) evidence of voluntary intoxication; and (4) cross-examination of Sandra Brown on her alleged relationship with 82-year old victim, Albert Dwelle. The trial court found that trial counsel was deficient on all four claims, but only found that prejudice resulted regarding the voluntary intoxication defense. *Id.* at 218. Although the trial court found only that trial counsel's failure to present evidence regarding voluntary intoxication resulted in prejudice, it granted relief on all four subclaims without conducting a *Strickland* analysis on the remaining three subclaims. *Id.* As a result, the Florida Supreme Court ruled that the trial court again failed to conduct a proper *Strickland* analysis. *Id.*

Even if trial counsel were deficient during the guilt phase, there is insufficient evidence to support the finding of *Strickland* prejudice. Morrison's alibi throughout had been that he was with Reginald Early and the Gillis Seels during the time that Dwelle was murdered. At trial, Mr. Early testified that on the day of the murder, around 4:00-4:30 P.M., he took Morrison to the shoe store. Trial counsel and his investigator were unable to locate Gillis Seels for trial. On collateral review, Ms. Seels testified at the evidentiary hearing that on the night of the murder, she saw

Morrison; he was high on drugs and asked for money; and she did not notice any blood stains on him. Ms. Seels claims she lived in the small community of Marietta, Florida continuously, yet it is curious, none of Morrison's family found or convinced Ms. Seels to present herself knowing that trial defense counsel was looking for her.

Charlene Wright also testified at the evidentiary hearing. She testified she told police that while visiting her mother in Marietta on the night of the murder she saw Morrison. She spotted him approximately one block away and they yelled "hey" to one another. According to Ms. Wright, this January night encounter took place between 8:00 and 9:00 P.M. She claims Morrison did not have money and did not have any blood on his clothes. Wright's account lacks credibility given her claim to have been able to discern at night from a block away Morrison had no money or blood on his clothes. At best, Wright's account has little weight given the fact that at the same time she claims to have seen Morrison in Marietta, Sandra Brown testified Morrison was leaving her apartment. Even if there were no blood on Morrison's clothes, it is of little exculpatory significance as the medical examiner testified Dwelle most likely was killed from behind, and neither of the major blood vessels in the neck were cut. Morrison's confession admits he was behind Dwelle when the fatal wounds were inflicted.

At the evidentiary hearing, Morrison presented evidence of a witness's statement that he heard noises coming from Dwelle's apartment that night. Morrison

failed to establish how presenting this witness's statement would create a reasonable probability that the outcome would have been different. This witness did not testify at the evidentiary hearing, nor did Morrison establish that sounds heard were a result of the murder. *See Hall v. Thomas*, 611 F.3d 1259, 1293 (11th Cir. 2010) (opining "it is well-settled in this Circuit that a petitioner cannot establish an ineffective assistance claim simply by pointing to additional evidence that could have been presented.") (citation omitted).

In short, the post-conviction evidence supporting a potential alibi defense was so weak it casts no doubt upon the outcome of Morrison's trial. Counsel's failure to present such evidence clearly did not meet Petitioner's burden of establishing prejudice under *Strickland*.

As for voluntary intoxication, Morrison's post-conviction expert, Dr. Eisenstein diagnosed Morrison with a drug addiction problem. He opined that such a problem could affect brain functioning and cause impairment. (PCR.15 2941-42, 2971-72). However, Dr. Eisenstein did not offer what Morrison's level of intoxication was at the relevant times and would only say that drinking "compromises cognitive abilities, cognitive flexibility, reasoning abilities." (PCR.15 2973). Such testimony as that presented here does not in any way suggest that had such testimony been presented at trial that the jury would have reached a different decision. Nor, does Petitioner explain how presenting an admission and avoidance

defense based on voluntary intoxication¹⁰ would have been consistent with Petitioner's alibi defense. *Jackson v. Shanks*, 143 F.3d 1313, 1320 (10th Cir. 1998)(finding counsel was not ineffective in failing to present inconsistent theories where "[p]ursuing a diminished capacity defense would have been inconsistent with Mr. Jackson's complete denial of involvement in the robbery.").

The trial court failed to consider Morrison's written statement in its *Strickland* analysis. *Morrison*, 236 So.3d at 218. The written statement was corroborated by physical evidence, including the location of the murder weapon, complete with DNA from blood consistent with the victim's DNA on the knife blade. In doing its *Strickland* analysis, the Florida Supreme court considered the written statement and all evidence presented at trial. When balanced against the insufficient evidence presented at the evidentiary hearing, the court correctly ruled that Morrison cannot demonstrate prejudice such that confidence in the outcome is undermined. *Id.*

In sum, the record supports the Florida Supreme Court's finding that Petitioner failed to establish prejudice from counsel's alleged guilt phase deficiencies under *Strickland*. The lower court's analysis is not contrary to any of

¹⁰ Morrison has failed to show that the Florida Supreme Court's decision conflicted with this Court especially in light of how Florida law treats diminished capacity defenses. *See, Reaves v. State*, 942 So.2d 874 (Fla. 2006) (rejecting claim of ineffectiveness for not presenting voluntary intoxication where defendant "did not present any evidence" showing "his level or state of intoxication at the time of the murder").

this Court's precedent. Nor, does the Florida Supreme Court opinion conflict with that of any other state court of last resort. Morrison has not shown any persuasive, much less compelling reasons for this Court to grant certiorari.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL



Leslie Campbell

Assistant Attorney General
Florida Bar No.: 0066631

Ilana Mitzner
Assistant Attorney General
Florida Bar No.: 0087065

OFFICE OF THE ATTORNEY GENERAL
1515 N. Flagler Dr., 9th Floor
West Palm Beach, FL 33401
Office: (561) 837-5016
Facsimile: (561) 837-5108
e-mail: CapApp@myfloridalegal.com
Leslie.Campbell@myfloridalegal.com

COUNSEL FOR RESPONDENT

Case No.: 17-8892

October 2017, Term

IN THE SUPREME COURT OF THE UNITED STATE

RAYMOND MORRISON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CERTIFICATE OF SERVICE I, Leslie T. Campbell, a member of the Bar of this Court, hereby certify that on July 23, 2017, a copy of the Brief for Respondent in Opposition in the above entitled case was furnished by United States mail, postage prepaid, to LINDA MCDERMOTT, ESQ., McClain & McDermott, P.A., 20301 Grande Oak Blvd, Suite 118-61, Estero, FL 33928, counsel for Petitioner herein. I further certify that all parties required to be served have been served.



LESLIE T. CAMPBELL

Assistant Attorney General

Florida Bar No. 0066631

OFFICE OF THE ATTORNEY GENERAL

1515 N. Flagler Dr.; 9th Floor

West Palm Beach, FL 33401

Office: (561) 837-5016

Facsimile: (561) 837-5108

E-mail: CapApp@MyFloridaLegal.com

Leslie.Campbell@MyFloridaLeagl.com

COUNSEL FOR RESPONDENT