

STATE OF MARYLAND,
Petitioner,

v.

ADNAN SYED,
Respondent.

IN THE
COURT OF APPEALS
OF MARYLAND

September Term, 2018

No. 24

Filed

JAN 10 2019

Suzanne C. Johnson, Clerk
Court of Appeals
of Maryland

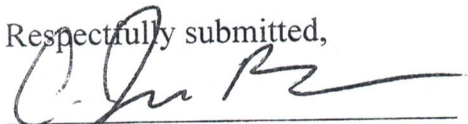
**Respondent's Motion for Leave to Submit a
Supplemental Authority Memorandum**

Respondent Adnan Syed requests leave to submit the accompanying supplemental authority memorandum, and states:

1. The Court of Special Appeals dissent, and the State's brief in this Court, have relied on Alabama authority, including *Broadnax v. State*, 130 So. 3d 1232 (Ala. Crim. App. 2013). Since oral argument before this Court, new authority from the Alabama Supreme Court has sharply undercut that reliance.
2. Maryland has no equivalent to Federal Rule of Appellate Procedure 28(j), allowing parties to submit supplemental authority letters without leave of Court.
3. Given the importance of Alabama authority to the dissent and to the State's arguments, the Court should exercise its general authority under Rule 8-431(a) to permit the filing of a supplemental memorandum.
4. Respondent has limited his letter to the parameters of Rule 28(j) ("The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words.").
5. Respondent has consulted an attorney for the State, Thiru Vignarajah, who stated that the State would not take a position either way on the proposed supplement.

WHEREFORE, Respondent requests that the Court enter an order: (1) granting him leave to file the accompanying memorandum; and (2) permitting the State to file a response, similarly limited to 350 words.

Respectfully submitted,



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Respondent's Supplemental Authority Memorandum

In *Ex parte Gissendanner*, No. 1160762, 2019 WL 101611 (Ala. Jan. 4, 2019), the Alabama Supreme Court concluded that defense counsel's failure to interview potential alibi witnesses constituted ineffective assistance of counsel, remanding for a new trial. *Id.* at *17-19, *21. *See* Ex. A.

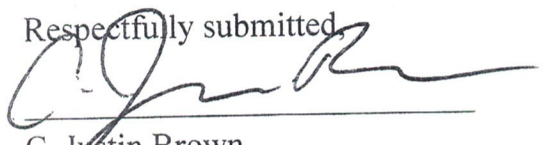
As in Syed's case, counsel in *Gissendanner* knew of alibi witnesses, but made no effort to investigate their potential testimony. 2019 WL 101611, at *17-19. Applying the objective inquiry required by *Strickland v. Washington*, 466 U.S. 668 (1984), the *Gissendanner* court concluded that "[d]efense counsel's actions cannot be justified as a valid strategic decision because it was *unreasonable under professional norms not to investigate* key witnesses." 2019 WL 101611, at *17 (emphasis added).

The Alabama intermediate appellate court had excused counsel's failure for a reason similar to that which the State advocates here—that the un-investigated alibi witnesses' testimony supposedly "would have contradicted Gissendanner's[.]" *Id.* at *9. But as the Alabama Supreme Court explained, counsel's *investigation* was a necessary prerequisite to any conclusion about the witnesses' potential testimony at trial; a failure to investigate deprives counsel of making any considered choice about trial strategy. *Id.* at *18.

The Alabama court also easily concluded that counsel's failure to investigate prejudiced the defendant. " 'There is nothing as dangerous as a poorly investigated alibi.' " *Id.* at *18 (quoting *Henry v. Poole*, 409 F.3d 48, 65 (2d Cir. 2005)). The uninvestigated witnesses "could have testified that they saw Gissendanner . . . during a period of time in which the crime was shown by the State's evidence to have been committed." *Id.* at *18 (internal quotations and citation omitted). The neglected witness in Syed's case would have done the same—indeed more persuasively; she was a disinterested acquaintance of Syed's, rather than a family member. *Id.* at *9. *See also Skakel v. Comm'r of Corrs.*, 188 A.3d 1, 42 (Conn. 2018), *cert denied*, ___ S. Ct. ___ (Jan. 7, 2019).

The Maryland Court of Special Appeals' conclusion that counsel's failure to investigate constituted ineffective assistance, entitling Syed to a new trial, should be affirmed.

Respectfully submitted,



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