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| MOHAMMAD BIGLARI | * | IN THE |
| Petitioner | * | CIRCUIT COURT |
| v. | * | FOR |
| STATE OF MARYLAND | * | BALTIMORE CITY |
| Respondent | * | CASE No.: 192064027 |
| | | PC: 10595 |
| * * * * * | | |

OPINION AND ORDER

Pending before the Court is Petitioner Mohammad Biglari’s Supplement to Petition For Post-Conviction Relief, filed through his attorneys C. Justin Brown and Lylian Romero on April 1, 2019, “incorporating all issues previously raised in his original *pro se* Petition dated March 21, 2016.”¹ The State’s Response to Petitioner’s Supplement, filed through ASA Michael Dunty, was filed on May 29, 2019. The Court held a hearing on the Petition on July 30, 2019.

POST CONVICTION PROCEDURAL HISTORY

Petitioner Mohammad Biglari filed a *pro se* Petition for Post Conviction Relief on March 21, 2016. The State filed a motion to dismiss the petition on April 28, 2016. APD D. Scott Whitney entered his appearance on behalf of the Petitioner on August 16, 2016. After several postponements, the Court held a hearing on the Petition on March 23, 2017. At the hearing, ASA Michael Dunty represented the State and APD D. Scott Whitney appeared on behalf of the Petitioner. On the hearing date, Petitioner Biglari refused to testify or participate after the Court denied his request to fire Whitney and appoint Biglari new counsel. The Court received into evidence transcripts and documents generated over the course of Biglari’s three trials, but due to Biglari’s refusal to

¹ This Court will address the single issue as instructed in the May 2, 2018 Order from the Court of Special Appeals: whether Petitioner “was denied his right to effective assistance of counsel during his first trial when counsel failed to investigate and present evidence that the victim’s estranged husband had physically abused and threatened to kill her.”

participate in the hearing, the Court received no testimony or documentary evidence beyond that adduced at his prior trials.

This Court issued its Statement Of Reasons And Order Of Court on August 11, 2017, granting Petitioner's Petition for Post Conviction Relief in part by ordering that, pursuant to Maryland Rule 4-345(e), Biglari was given leave to file a belated motion for modification within 90 days of entry of the Court's Order, and pursuant to Maryland Rule 4-344, Biglari was granted leave to file a belated motion for review of his sentence by a three-judge panel within 30 days of entry of the Court's Order. The Court's Order denied all other relief.

On September 11, 2017, Petitioner filed an application for leave to appeal. On May 7, 2018, the Court of Special Appeals vacated this Court's August 11, 2017 ruling, and remanded the matter back "to address, as required by Md. Rule 4-407, Applicant's contention that he was denied his right to effective assistance of counsel during his first trial when his counsel failed to investigate and present evidence that the victim's estranged husband had physically abused and threatened to kill her."

STATEMENT OF FACTS

The Court's Statement Of Reasons And Order Of Court dated August 11, 2017 included a lengthy recitation of the factual and procedural background involved in this matter. Substantial (pp. 2-9) excerpts are duplicated here:

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from the March 1991 murder of Barbara Halsey, a thirty-five year old Baltimore woman. Petitioner Mohammad Biglari, the victim's downstairs neighbor, quickly became investigators' primary suspect. After a year-long manhunt, Biglari was arrested, tried for and convicted of Halsey's murder in October of 1994. Biglari's conviction was later overturned on appeal. Coupled with a four-year stay in a mental institution and two subsequent trials, Biglari's

circumstances have left this case with a complicated procedural history. Given the convoluted nature of these proceedings and the fact-intensive character of Biglari's allegations of error, a detailed recitation of the facts and procedure underlying his petition is in order.

a. The death of Barbara Halsey

On the afternoon of March 29, 1991, Barbara Halsey left her office for lunch and never returned.

A staff member at the Veteran Administration's Loch Raven Outpatient Clinic, Halsey frequently spent her lunch breaks at home. On days when she did so, Halsey took advantage of the VA's shuttle service. Although intended as a service for patients rather than employees, VA driver Mark Gernhardt regularly ferried [Halsey to and from] her Calvert Street apartment during their mutual lunch hour. When Gernhardt dropped Halsey off out front of 2826 North Calvert Street in the early afternoon of Friday, March 29, 1991, he unwittingly became the last known person to see Halsey alive.

Gernhardt returned from his errands an hour later to find Halsey absent from their arranged meeting place. Halsey failed to answer her doorbell. Assuming she had gone on without him, Gernhardt returned to the clinic. To Gernhardt's surprise, Halsey was not there either. Not wanting to get his friend in trouble with their employer, however, Gernhardt said nothing.

When a series of phone calls went unanswered throughout the evening, Gernhardt grew increasingly concerned. Still unable to raise Halsey by phone on the morning of Saturday, March 30, Gernhardt enlisted the aid of another coworker, Laura Kraft. Gernhardt, Kraft and Kraft's boyfriend arrived at Halsey's North Calvert Street apartment around 9am. Utilizing Kraft's spare key, the trio entered Halsey's building. Inside, they found the door to Halsey's third-floor walk-up ajar; its jamb, bloodied. Halsey—bound hand and foot with a combination of electrical tape, her own telephone cords and a cloth belt—was dead on her bedroom floor.

A search of the crime scene yielded police investigators few leads. Although the apartment showed signs of struggle, there was neither indication of forced entry nor any usable forensic evidence. A pair of discarded zip ties, found above the victim's head and below her feet, were among the few pieces of tangible evidence recovered from the scene. An examination of Halsey's body revealed she had been both stabbed and shot multiple times.

In the course of their investigation, police called on the occupants of the building's first-floor unit. At the time, the apartment was occupied by Petitioner Mohammad Biglari and his family. Petitioner's wife, Nancy Biglari, told investigators that her husband was and had been away on business. At their prompting, Mrs. Biglari told police that he had recently been given a supply [of] zip ties.

Further inquiry revealed that Biglari and Halsey had had a turbulent history. On November 11, 1990, Halsey had filed a report with Baltimore Police alleging a pattern of prolonged harassment. In his report, the responding officer noted repeated complaints Biglari had lodged against Halsey. Biglari had on multiple occasions claimed his upstairs neighbor was excessively noisy and had alleged her to be a prostitute. Each of these complaints, the officer noted, had proven baseless. As a result of Halsey's criminal complaint, Biglari was found guilty of harassment in the district court on December 12, 1990. Biglari was granted 18 months' probation before judgment and assessed a \$100 fine. Shortly thereafter, Biglari allegedly threatened physical violence against Halsey and the prosecuting attorney.

Given the absence of signs of forced entry into the building, the information given to officers by Biglari's wife, and the known acrimony between Biglari and Halsey, police secured a warrant to search his apartment for weapons and restraints on Sunday, March 31. The warrant was executed that same day. In the course of their search, police recovered from Biglari's apartment 27

zip ties and six rolls of black electrical tape similar to that used to bind the victim. Biglari became the focus of the investigation.

On April 16, 1991, Biglari called Baltimore homicide detectives. A brief conversation ensued. When investigators mentioned Halsey's name, Biglari hung up. For nearly a year thereafter, he vanished altogether.

A warrant was issued for Biglari's arrest on May 23, 1991. Biglari resurfaced on February 2, 1992 when, acting on a confidential tip, Baltimore police arrested him leaving a York Road church. Biglari initially gave [the] officer a false name and a phony Virginia driver's license. Once his identity had been positively established, Biglari made a series of unsolicited assertions: that the electrical tape found in his apartment was old, that Halsey was a prostitute, that he had had no relationship with the victim, and that he had fled after the April 1991 phone call because he was afraid. A subsequent search of Biglari's car uncovered, a pair of handcuffs, rubber gloves, and a mask. Police also discovered two handguns, though neither could be tied to Halsey's death.

On March 4, 1992, a Baltimore City grand jury indicted Biglari for first-degree murder.

a. The 1994 trial

Biglari's first trial commenced before the Judge Roger W. Brown on October 4, 1994. The defendant opted for a bench trial, which lasted six days. Gernhardt and Kraft both testified at the trial, as did police investigators Michael Crutchfield, the lead detective in the Halsey case, and Larry Bray, an officer familiar with the prior acrimony between Biglari and the victim. On October 17, 1994, Judge Brown found Biglari guilty of Halsey's murder and related firearms crimes and crimes of violence, for which he sentenced Biglari to a total sentence of life imprisonment plus twenty consecutive years. In an unreported opinion dated June 13, 1995, the Court of Special Appeals vacated Biglari's conviction on evidentiary grounds. *See generally Biglari v. State*, No. 1714, Sept. Term 1994 (Md. App. June 13, 1995). Before Biglari could be retried, Circuit Court Judge Joseph P.

McCurdy, Jr. adjudged him incompetent to stand trial and, on December 1, 1997, remanded the defendant to the custody of Clifton T. Perkins Hospital.

b. The 2002 trial

Biglari remained a patient at Perkins for nearly four years. On April 13, 2001, Judge McCurdy determined that Biglari had been restored to competence and ordered his release from the facility.

Biglari's second trial began on June 11, 2002 and lasted for four days. In addition to the live testimony of Mark Gernhardt, Laura Kraft and others, the State read into the record the prior testimony of Det. Crutchfield and Sgt. Bray. Crutchfield had died in the intervening years, while Bray had relocated to Bosnia.

On the final day of proceedings, Biglari discharged counsel and opted to proceed pro se. Despite repeated admonitions from the court, Biglari refused to conform his conduct to the rules of procedure and courtroom decorum. Judge Allen Schwait ultimately ordered the bailiff to remove Biglari from the courtroom and allowed his trial to proceed *in absentia*. As a result, Biglari was prohibited from delivering a closing argument. Jurors found Biglari guilty on all counts later that afternoon. On November 18, 2002, Judge Schwait sentenced Biglari to a total sentence of life imprisonment plus fifteen years.

Biglari appealed. On September 7, 2004, the Court of Special Appeals determined that while the trial judge had not abused his discretion in ordering Biglari removed from the courtroom, he had erred reversibly in denying Biglari a final opportunity to "promise to conduct himself properly" and deliver a closing argument. *Biglari v. State*, 156 Md. App. 657, 674 (2004). A new trial was ordered. *Id.*

c. The 2006 trial

Biglari's third trial commenced on April 21, 2006 before the Honorable Kaye A. Allison. Jurors once again heard the live testimony of witnesses including Mark Gernhardt and Laura Kraft,

who had married and taken the name Laura Kraft Moreno in the four-year interim since Biglari's last trial. As Crutchfield was deceased and Bray remained unavailable, transcripts of their 1994 trial testimony were read into the record.

A three-member legal team composed of Sean Coleman, Ann Marie Gering and Jeff Gilleran appeared on Biglari's behalf. On April 26, 2006, the final day of Biglari's trial, a rift developed between the defense attorneys and their client. As Judge Allison prepared to instruct the jury and move into closing arguments, Biglari attempted to fire his attorneys for their failure to call his wife as a witness.

The Court refused to appoint Biglari a new attorney. *Id.* at 10:7–8. Biglari declined the opportunity to represent himself. *Id.* at 10:13–20. After the closing arguments of counsel were heard, the jury returned a verdict of guilty as to all counts. On June 15, 2006, Judge Allison sentenced Biglari to a total of life imprisonment plus 20 consecutive years. The Court of Special Appeals affirmed Biglari's conviction in an unreported opinion dated July 10, 2008. *Biglari v. State*, No. 939, Sept. Term 2006 (Md. App. July 10, 2008). Biglari's sentence was reduced on March 15, 2013 to life plus fifteen years, when Judge Yolanda Tanner granted Biglari's October 11, 2012 motion to correct an illegal sentence on the grounds that the State had not introduced new evidence at the 2006 trial to warrant a sentence more severe than that imposed in 2002.

In the decade since his last trial, Biglari has repeatedly filed and then withdrawn a petition for post conviction relief. As the ten-year deadline for the filing of a post conviction petition loomed, *see* Md. Code Ann., Crim. Proc. § 7-103(b)(1) (imposing deadline), Biglari filed his petition for the final time on March 21, 2016. On April 26, 2016, the State filed its Response to the petition, seeking its dismissal or, in the alternative, to have it denied. A series of party postponements held the petition in limbo until this Court's March 23, 2017 hearing. ASA Michael Dunty appeared at the hearing on behalf of the State. Although Biglari was present for the hearing, he refused to testify or

otherwise participate after the Court denied his request to fire APD D. Scott Whitney and appoint him a new attorney. The parties jointly moved the transcripts and various documents generated over the course of Biglari's three trials into evidence; due to Biglari's reticence at the hearing, no testimony was heard at the March 23 and no documentary evidence was introduced beyond that adduced at his trials.

SUPPLEMENT TO PETITION

On April 1, 2019, Petitioner supplemented his March 21, 2016 Petition through his attorneys C. Justin Brown and Lylian Romero. The supplemental petition reiterates the Court of Special Appeals' instruction that this Court

consider and rule upon Biglari's leading post-conviction claim: that his original trial counsel, Leslie Stein, was constitutionally ineffective during Biglari's first trial for failing to investigate and present evidence that the victim's estranged husband had physically abused and threatened to kill her, and that this failure affected the outcome of Biglari's most recent, 2006 trial.

Sup. Pet. p. 3. The Supplement to the Petition asserts that Leslie Stein, trial counsel in Biglari's first trial in 1994, was constitutionally ineffective when he failed to investigate and present evidence of an alternate suspect—namely, James Halsey, the victim's estranged husband, who had physically abused her and threatened to kill her. Supp. p. 10. The Supplement asserts that Stein had no strategic reason to fail to incorporate the evidence concerning James Halsey in the defense of Biglari's innocence, because the evidence presented a different murderer into the crime; it could have impeached Detective Crutchfield's credibility, as Crutchfield knew about the history between James Halsey and the victim but failed to investigate it, and it would have raised reasonable doubt as to Biglari's guilt. Supp. p. 11. The Supplement states that Stein's errors tainted Biglari's subsequent trials because the death of Crutchfield precluded receipt of the evidence into those later trials. Petitioner asserts that “[t]he failure to present evidence of a viable, alternate suspect can be sufficient to undermine confidence in the outcome of a trial,” thus proving prejudice under *Strickland*. Supp. p. 12.

ANALYSIS—INEFFECTIVE ASSISTANCE OF COUNSEL

Criminal Defendants are guaranteed the right to effective assistance of counsel by the Sixth Amendment to the Constitution, made applicable by the Fourteenth Amendment and Article 21 of the Maryland Declaration of Rights. *Mosley v. State*, 378 Md. 548, 556 (2003). The Petitioner bears the burden of proving ineffective assistance of counsel. *Gross v. State*, 371 Md. 334, 348 (2002).

The Supreme Court of the United States established the legal principles that govern ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668 (1984). An ineffective assistance claim has two components: petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense. A petitioner must satisfy both components to bring a successful claim of ineffective assistance. *Strickland*, 466 U.S. at 687.

“To establish deficient performance, a petitioner must demonstrate that counsel's representation ‘fell below an objective standard of reasonableness.’” *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, at 688). Judicial scrutiny of trial counsel's performance must be highly deferential. *State v. Borchardt*, 396 Md. 586, 604 (2007). The Court must judge the reasonableness of counsel's contested conduct on the facts of the case, and view it as of the time of the conduct. *Strickland* at 690. “It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Id.* at 689. The Court must take every effort to eliminate the effects of hindsight bias, and, instead, presume that counsel's actions fall within the wide range of reasonable professional assistance. *Id.*

To satisfy the second prong of the ineffective assistance of counsel standard, prejudice, Petitioner must show that his counsel's errors were so serious that they deprived him of a fair trial. *Id.* at 687. In other words, Petitioner must establish “that there is a reasonable probability that, but for counsel's errors,” the result of the case would have been different. *Hill v. Lockhart*, 474 U.S. 52,

59 (1985). Therefore, “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland* at 691 (citing *United States v. Morrison*, 449 U.S. 361, 364-65 (1981)).

Did Leslie Stein commit an unreasonable error when he failed to question Crutchfield about Halsey’s estranged husband’s threats?

Petitioner asserts that through Stein’s unreasonable error, Petitioner was denied a powerful, uninvestigated line of defense that tainted Petitioner’s 2006 trial. Petitioner must “show that counsel’s actions were not the result of trial strategy.” *State v. Syed*, 463 Md. 60, 75 (2019) *reconsideration denied* (Apr. 19, 2019). “A strategic trial decision is one that ‘is founded upon adequate investigation and preparation.’” *Syed*, 463 Md. 75, quoting *Borchardt*, 396 Md. at 604 (2007). The Court must evaluate Stein’s investigatory decisions “in light of the information known at the time of the decisions, not in hindsight.” *Strickland* at 680. In its evaluation of counsel’s investigatory decisions, the Court should remember that “counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Id.* at 690. The American Bar Association’s Standards of Criminal Justice, 3rd ed. 1993, expounded upon the prevailing professional norms of a defense counsel’s duty to investigate at the time of Petitioner’s 1994 trial:

- (a) Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused’s admissions or statements to defense counsel of facts constituting guilt or the accused’s stated desire to plead guilty.

Syed at 76. The scope of counsel’s duty to investigate depends on factors such as the “strength of the government’s case and the likelihood that pursuing certain leads may prove more harmful than helpful.” *Strickland* at 681. If there was “more than one plausible line of defense...counsel should ideally investigate each line substantially before making a strategic

choice about which lines to rely on at trial.” *Id.* Strategic choices not to rely on certain lines of defense—if made after counsel conducted substantial investigation—“will seldom if ever’ be found wanting.” *Id.*

Certain lines of defense are not excludable “for other than strategic reasons.” *Id.* If Stein’s failure to investigate an alternative suspect “undermine[d] the adversarial testing process inherent in a contested case,” that failure ordinarily would fall short of reasonable professional judgment, and could not result in formation of sound trial strategy. Relevant factors in deciding the reasonableness of strategic choices include “the experience of the attorney, the inconsistency of unpursued and pursued lines of defense, and the potential for prejudice from taking an unpursued line of defense.” *Id.*

During discovery in this case, the State had provided two documents: a police report dated June 22, 1989, completed by an “Officer Irwin,” describing an incident in which the victim had accused her estranged husband, James Halsey, of assaulting her and threatening to kill her, and a second document, dated April 2, 1991, entitled “Information Sheet,” completed by lead Detective Michael Crutchfield and detailing Crutchfield’s interview of James Halsey. The Information Sheet relayed that the victim had called James Halsey on March 29, 1991 at 6:15 a.m.;² that the victim and James Halsey had been separated since September 2, 1989; that James Halsey had stated that the victim had been dating “Clark”; and that the victim and Clark were having problems. The Information Sheet made no mention of Halsey’s prior assault or threat to murder his wife. Because this information was provided by the State in discovery, there is little reason to doubt that Stein³ had notice of these documents. Stein did not incorporate into Petitioner’s defense information gleaned

² Barbary Halsey was last seen alive on the afternoon of March 29, 1991.

³ At the post-conviction hearing on July 30, 2019, counsel reported that Leslie Stein has no memory or file of the 1994 trial. Counsel provided an affirming affidavit to the Court on August 9, 2019.

from these two documents. More specifically, Stein did not question Crutchfield regarding the police investigation (or lack thereof) into James Halsey as a possible suspect. Crutchfield died before Petitioner's second trial.

The defense in all three of Mr. Biglari's trials asserted that Biglari was not the perpetrator, focusing on an alibi that Biglari was out of town at the time of the murder. At the Post Conviction hearing on July 30, 2019, Petitioner called third (2006) trial counsel Sean Coleman to testify. Coleman deduced that Stein's trial strategy⁴ included the inadequacy of the State's circumstantial case. Coleman stated that the reasonable but neglected line of defense would have questioned Crutchfield regarding inadequacies of the police investigation surrounding James Halsey: Halsey had threatened to kill the victim; Halsey had spoken to the victim on the day of her murder; and the introduction of another suspect would not have contradicted the defense's strategy. Coleman testified that Stein's neglect of this line of defense precluded Coleman from using it in the 2006 trial—after Crutchfield's death. Therefore, Petitioner asserts that Stein's deficient acts—his failure to bring in the reports—and to question Crutchfield regarding a lack of the police investigation into the alternative suspect—constitutes unreasonable error and satisfies a showing of ineffective assistance of counsel.

At the hearing on July 30, 2019, the State argued that while Crutchfield may have been the most potent channel to introduce the information to the jury, the information forming the neglected line of defense could have been introduced via multiple witnesses. Coleman's testimony explained how multiple witnesses, as opposed to the singular Crutchfield, presented less viable ways of introducing the information into evidence. Coleman also testified that these multiple alternative methods presented by the State may

⁴ Coleman did not see Stein's physical file, nor did he speak with Stein regarding the trial.

have faced admissibility issues (validated by Coleman's failed attempt to use Laura Kraft-Moreno to introduce the information). Coleman's testimony regarding each alternative is as follows.

- Detective Tomlin, the secondary detective who could have introduced the information, was out of the state and unavailable. At the third trial, Tomlin's prior trial testimony was read into the Record, but this testimony did not address the line of defense at issue. Moreover, because Tomlin was not the lead detective, it is not likely that he could have answered questions regarding the thoroughness of the investigation into James Halsey's connection with the murder.
- The Sergeant who would have overseen Detective Crutchfield's investigation, while possibly serving as an avenue to introduce the information, likely would have had minimal efficacy.
- Laura Kraft-Moreno, whom Coleman had attempted to use at the 2006 trial to introduce the information, had been an unsuccessful avenue (the Court ruled her testimony regarding the information at issue inadmissible).
- Coleman testified that he was not sure what efforts were made to locate Officer Irwin to authenticate the police report. Coleman further testified that Officer Irwin's testimony would not have been helpful to the defense, because Irwin had nothing to do with the investigation of the murder, and Irwin would have revealed James Halsey's cleared assault charge. Coleman did not know another method, besides Officer Irwin, that would have successfully authenticated the report to get it into evidence.

- Gernhardt, called as a witness in all three trials, was a paramour of the victim at the time of her murder, and a possible alternate suspect. Though his multiple testimonies presented conflicting information regarding his relationship to the victim, Coleman made a strategic decision not to address the inconsistencies with the jury, because of Coleman’s concern that the jury could be offended by a line of questioning placing the victim in an unfavorable light based on promiscuity.
- “Clark,” the person dating the victim at the time of the murder, and whose name appeared on Crutchfield’s Investigation Report, might have been a viable witness to call regarding the information, had the 2006 trial not occurred 15 years after the first trial. Likewise, several alternative people who had possible relationships with the victim may have been viable as alternative suspects, but the defense had no information that any of these people had assaulted or threatened to kill the victim. Coleman testified that he had concern that such lines of questioning would offend the jury by painting the victim in an unfavorable light based on promiscuity.
- James Halsey, the victim’s estranged husband, was a risky witness;⁵ Coleman testified that if Halsey had been questioned on the stand regarding his threats to kill his wife or whether he had had in fact murdered his wife, Halsey

⁵ At the Post Conviction hearing, Coleman stated the following regarding calling Halsey: “We discussed it, we thought about it, but putting on a witness simply without much other investigation without being able to show how we came to this argument and accusing him of murder without having the testimony of the police, without having something else to buttress that argument I think would have backfired and wouldn’t have been helpful to the defense.” Courtsmart recording 7/30/19 at 3:33.

would have denied any involvement, resulting in the defense being stuck with the denial.⁶

Coleman testified that only Detective Crutchfield could have laid out the investigatory steps, if any, that the police had taken. Coleman's cross-examination of Crutchfield would have shown that overall police investigation was lacking and would have further shown that another person had animus to kill the victim. Petitioner thus has identified an omission of Leslie Stein (in Stein's failure to cross-examine Crutchfield about James Halsey and prior abuse and threats against the victim) "alleged not to have been the result of reasonable professional judgment." *Strickland* at 690.

"The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Id.* at 688. Counsel's skill and knowledge must ensure that "the trial [is] a reliable adversarial testing process." *Id.* Stein had a duty to "make reasonable investigations...that make[] particular investigations unnecessary." *Id.* at 691. Here, the particular line of defense at issue remains uninvestigated. Based on the circumstances at the time of the 1994 trial,⁷ the Court finds that Leslie Stein's decision not to question Detective Crutchfield regarding the information available in the two State-produced documents was unreasonable; at the time of the 1994 trial, Stein had a duty to conduct a prompt investigation as directed by ABA *Standards for Criminal Justice* (3rd ed. 1993);⁸ the Court finds that Stein's lack of investigation into the scope of police investigation as it may have related

⁶ At the Post Conviction hearing, the Court took judicial notice of the unreasonableness of this tactic: "I'll essentially take judicial notice that it's unreasonable to contemplate putting the husband on the stand to ask how often he beat his wife." Courtsmart recording 7/30/19 at 4:20:46.

⁷ The Court may also take into consideration acts of the defendant that may have affected Stein's actions. *See Strickland* at 691. While Coleman testified at the July 30, 2019 hearing that Petitioner had been "a handful," the Court has heard nothing suggesting that Petitioner gave Stein reason to believe that pursuing the line of defense at issue here would have been fruitless or harmful.

⁸ The American Bar Association standards present guides in determining what is reasonable; but they are only guides. *See Strickland* at 688.

to another suspect thwarts any claims of sound trial strategy. Stein had notice of the existence of the reports; Stein was an experienced trial attorney; Stein had pointed out the weaknesses of the State's circumstantial case and utilized this weakness as a defense; he should have considered the likelihood of help or harm that pursuit of the lead at issue may have had on the defense. *Id.* at 681. Here, the undeveloped line of questioning at issue would have provoked significant testimony from Crutchfield, the lead detective on the case, and the most viable channel to speak about the scope of investigation into James Halsey as an alternative suspect. The lack of exploration into such a line of defense "falls short of the tenets of a criminal defense attorney's minimum duty to investigate the circumstances and facts of the case." *Syed* at 82, citing American Bar Ass'n, *ABA Standards for Criminal Justice* (3rd ed. 1993) ("Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case[.]" Emphasis added. Stein's failure to investigate a possible alternative suspect did not meet the standard of reasonable professional judgment and is therefore an act of ineffective assistance of counsel.

What was the prejudicial consequence, if any, of the deficient act of Stein in the first trial to the third trial?

Having found ineffective assistance of counsel, the Court turns to the prejudice prong of *Strickland*. "A court's evaluation of the prejudice prong under *Strickland* asks, 'whether it is "reasonably likely" the result would have been different' if not for counsel's deficient performance." *Id.* at 87.

The Sixth Amendment's right to counsel exists "to protect the fundamental right to a fair trial." *Strickland* at 684. "A fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the

proceeding.” *Id.* at 685. There is “potential for prejudice from taking an unpursued line of defense.” *Id.* at 681. While the State argues that it was possible for Petitioner to have introduced the line of defense at issue with multiple alternative methods, this Court finds that Petitioner suffered the prejudice of losing the best, and most potent, way to get a pertinent line of defense before any jury. Due to Crutchfield’s death, subsequent trials have not been able to cure this prejudice. Because Petitioner’s right to have a functioning “adversarial testing process” was prejudiced in the 1994 trial, “[t]he likelihood of a different result” is “not just conceivable,” it is substantial. *Syed* at 87. The subsequent trials have yet to involve the undeveloped line of defense at issue. The prejudice has remained without cure. Therefore, this Court finds that Petitioner has satisfied his burden of showing both the ineffective act or omission of counsel and a resulting prejudice. Accordingly, it is this 28th day of August, 2019, hereby

ORDERED that Petitioner’s Petition for Post Conviction Relief is **GRANTED**, and Petitioner shall be afforded a new trial, and it is further

ORDERED that the Clerk of the Circuit Court for Baltimore City shall set this case in for trial.

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| <p><i>Judge Pamela J. White</i></p> <p>Signature Appears on Original</p> |
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Judge Pamela J. White, Part 7
Circuit Court for Baltimore City

Cc:
ASA Michael Dunty
C. Justin Brown, Esq.
Lilian Romero, Esq.