IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2018

No. 126

STATE OF MARYLAND,

Petitioner,

v.

ADNAN SYED,

Respondent.

On Petition for Writ of Certiorari
from the Court of Special Appeals of Maryland
September Terms, 2013, 2016
Case Nos. 1396, 2519

ANSWER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI WITH CONDITIONAL CROSS-PETITION

C. Justin Brown
BROWN LAW
231 East Baltimore Street, Suite1102
Baltimore, Maryland 21202
Tel: 410-244-5444
Fax: 410-934-3208
brown@cjbrownlaw.com

Catherine E. Stetson (*pro hac vice* pending)
James W. Clayton (admitted *pro hac vice*)
Kathryn M. Ali (admitted *pro hac vice*)
W. David Maxwell (admitted *pro hac vice*)
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
Tel: 202-637-5491
Fax:202-637-5910
cate.stetson@hoganlovells.com

Counsel for Respondent Adnan Syed

May 29, 2018

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

STATUTES:

OTHER AUTHORITIES:

IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2018

No. 126

STATE OF MARYLAND,

Petitioner,

v.

ADNAN SYED,

Respondent.

On Petition for Writ of Certiorari
from the Court of Special Appeals of Maryland
September Terms, 2013, 2016
Case Nos. 1396, 2519

ANSWER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI WITH CONDITIONAL CROSS-PETITION

INTRODUCTION

Respondent Adnan Syed, through undersigned counsel and pursuant to Maryland Rules 8-303(d) and 8-302(c), answers the State's Petition for Writ of Certiorari and submits a Conditional Cross-Petition for Writ of Certiorari.

Discretionary review is unwarranted. The State's Petition identifies no legal issue of broad import. The Court of Special Appeals applied established Sixth Amendment

principles to the particular facts of this case. A third opinion re-evaluating those facts would not be in the public interest. The State's Petition should be denied.

If, however, this Court disagrees, it should also grant Syed's Conditional Cross-Petition. The Court of Special Appeals' finding that Syed waived a separate ineffective-assistance claim conflicts with this Court's jurisprudence on an issue of statutory interpretation, making it a suitable candidate for discretionary review—indeed, far more so than the Petition.

QUESTIONS PRESENTED FOR REVIEW

The State's Petition.

Whether the Court of Special Appeals correctly held that trial counsel provided ineffective assistance by failing to contact a disinterested alibi witness who would have testified as to the Respondent's whereabouts during the time of the murder?

Syed's Conditional Cross-Petition.

Whether the Court of Special Appeals drew itself into conflict with *Curtis v. State*, 284 Md. 132 (1978), in finding that Syed waived his ineffective-assistance claim based on trial counsel's failure to challenge cell-tower location data, where the claim implicated the fundamental right to effective counsel and was therefore subject to the statutory requirement of knowing and intelligent waiver?

COUNTERSTATEMENT

Hae Min Lee, a student at Woodlawn High School in Baltimore County, disappeared on the afternoon of January 13, 1999. Nearly a month later, her body was found buried in Leakin Park in Baltimore City. *Syed v. Maryland*, Nos. 2519, 1396, Slip Op. 1 (Md. Ct. Spec. App. Mar. 29, 2018) (hereinafter, "Op.").[1] The State charged Syed, another Woodlawn student, with Hae's murder. *Id.* At his trial, Syed was represented by Cristina Gutierrez. The Syed trial turned out to be among Gutierrez's last; she was disbarred in 2001.

A. The State's Theory

The State's case against Syed relied primarily on the story of one witness—Jay Wilds—and cell phone records. Through Wilds' testimony, the State presented a timeline of Syed's purported movements on the day Hae disappeared. *Id.* at 6. According to the State, Syed left school with the victim shortly after classes ended at 2:15 p.m. and drove in her car to a parking lot. By 2:36 p.m., Syed had allegedly committed the murder and called Wilds from the parking lot asking to be picked up. *Id.* at 7–8.

Later that night, Wilds claims, he and Syed buried Hae's body in Leakin Park. *Id.* at 12. The State contended that two incoming calls to Syed's cell phone, at 7:09 p.m. and 7:16 p.m., confirmed that Syed was in that area at the time. *Id.* at 13. To support its contention, the State presented an expert who testified on using cell-tower data to determine the location of a cell phone at a particular time. *Id.*

---

[1] Respondent's counterstatement is drawn largely from the Court of Special Appeals' opinion.

The jury convicted Syed and sentenced him to life plus 30 years in prison.

B. The Missing Alibi Evidence

The jury that convicted Syed, however, never heard a critical piece of evidence: the testimony of Asia McClain, a fellow Woodlawn student. McClain sent two letters to Syed while he was awaiting trial, stating that McClain remembered speaking with Syed in the Woodlawn Public Library on the day of the murder, and at the same time the State alleged that the murder occurred. In her letters, McClain provided multiple contact numbers, in addition to a street address, and stated that she was trying to meet with Syed's lawyer. *Id*. at 66–69.

Syed sent McClain's letters to his trial counsel and asked her to contact McClain. *Id*. at 61–62. She never did. *Id*. at 69–70.

C. The Circuit Court Grants a New Trial.

Syed's petition for post-conviction relief was initially denied, appealed, and remanded for additional fact finding. Upon remand, the Circuit Court addressed two ineffective-assistance claims: counsel's failure to contact a potential alibi witness, and counsel's failure to cross-examine the State's expert on the reliability of cell-tower location evidence, when the cover sheet accompanying that evidence made it clear that it was *not* reliable to place location of received calls. *Id*. at 19.

After a five-day hearing, the Circuit Court granted Syed's petition, vacated his conviction, and granted a new trial. The court found that trial counsel provided ineffective assistance by failing to challenge the State's expert using the cover sheet and that this failure prejudiced Syed's defense. *Id*. at 20. The State had protested that this

ineffective-assistance claim was waived, but the court disagreed; as it explained, because Syed's allegation of error was premised on the fundamental right to counsel, it could only be waived knowingly and intelligently, and Syed had not done so. *Id*. at 42.

On Syed's alibi claim, the Circuit Court found that trial counsel performed deficiently because she "made *no effort* to contact McClain[.]" *Id*. at 74 (quoting Ex. A, Mem. Op. II, *Syed v. State*, Pet. No. 10432, at 22 (Md. Cir. Ct., June 30, 2016) (hereinafter, "Cir. Ct. Op.")). Nonetheless, the court concluded that trial counsel's failure to investigate the alibi did not prejudice Syed's defense. *Id*. at 95. Although acknowledging that McClain's testimony could have undermined the State's theory that Syed murdered the victim between 2:15 and 2:36 p.m., the court determined that "the crux of the State's case" was not the murder itself, but that Syed allegedly "buried the victim's body in Leakin Park at approximately 7:00 p.m." *Id*. (quoting Cir. Ct. Op. 25).

D. The Court of Special Appeals Affirms.

The Court of Special Appeals agreed to review both Syed's cell-tower and alibi claims, and after briefing and argument, the Court of Special Appeals affirmed the decision. The panel majority agreed with the Circuit Court that "trial counsel's failure to make any effort to contact McClain as an alibi witness fell below the objective standard of a reasonably competent attorney acting under prevailing norms[.]" *Id*. at 93. The majority also concluded, contrary to the Circuit Court, that this failure *had* prejudiced Syed's defense because McClain's "testimony would have directly contradicted the State's theory of when Syed had the opportunity and did murder" the victim. *Id*. at 102.

On the cell-tower claim, however, the Court of Special Appeals disagreed with the Circuit Court's waiver analysis, finding that Syed's ineffective-assistance claim was not subject to the statutory requirement of knowing and intelligent waiver. *Id*. at 43–53.

The State then petitioned this Court for a writ of certiorari.

REASONS FOR DENYING THE WRIT

Certiorari is reserved for issues of "public importance[.]" *Sturdivant v. Maryland Dep't of Health & Mental Hygiene*, 436 Md. 584, 589 (2014); *see*, *e.g.*, *Carter v. State*, 456 Md. 81 (2017) (No. 54, Sept. Term 2017) (reviewing whether life sentences for Maryland juvenile offenders afford them a meaningful opportunity to secure release as required by the Eighth Amendment); *Kopp v. Schrader*, 456 Md. 524 (2017) (No. 72, Sept. Term, 2017) (reviewing the scope of governor's recess-appointment power under the Maryland Constitution). Certiorari is generally denied where the "questions presented, the analysis, and the outcome are wholly unremarkable and of interest solely to the litigants." *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 218 n.10 (2011); *see also* Maryland State Bar Ass'n, Inc., Appellate Practice for the Maryland Lawyer: State and Federal, William J. Murphy, et al., *Petitions for Certiorari—View from the Bar* 385–86 (Paul Mark Sandler et al., 4th ed. 2014) (noting that "the Court of Appeals is generally reluctant to reconsider" issues that "turned upon a weighing of the evidence or an issue of fact").

I. THE COURT OF SPECIAL APPEALS CORRECTLY APPLIED ESTABLISHED PRINCIPLES TO THE SPECIFIC FACTS BEFORE IT.

The Court of Special Appeals did nothing of any interest beyond this single case in its ineffective-assistance ruling on counsel's failure to contact an alibi witness. Indeed, the court disclaimed any intent to create "a bright line rule with respect to ineffective assistance of counsel claims." Op. 88 n.37 (internal quotations and citations omitted). Nonetheless, the State asserts in general terms that the Court of Special Appeals imposed a new duty with supposedly far-reaching implications. Pet. 5-6. It did no such thing. It applied longstanding principles from *Strickland v. Washington* and its progeny to the specific facts before it. *See* 466 U.S. 668 (1984).

Because *Strickland* also discussed counsel's duty to investigate, the Court of Special Appeals recognized that that case provided the governing standard: "In any ineffectiveness case, *a particular decision not to investigate* must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Op. 77 (quoting *Strickland*, 466 U.S. at 690–91) (emphasis added).

In addition to reciting this standard, the Court of Special Appeals also relied on three federal decisions that this Court already has cited with approval. *Id.* at 78 (citing *In Re Parris W.*, 363 Md. 717 (2001)); *see also Griffin v. Warden, Maryland Corr. Adjustment Ctr.*, 970 F.2d 1355 (4th Cir. 1992); *Grooms v. Solem*, 923 F.2d 88 (8th Cir. 1991); *Montgomery v. Petersen*, 846 F.2d 407 (7th Cir. 1988). Each underscores that the court simply applied established Sixth Amendment jurisprudence in reaching its holding. In *Montgomery*, for example, the court emphasized that counsel need not "'track down

every lead' or 'personally investigate every evidentiary possibility[.]'" 846 F.2d at 413. "Nevertheless," the court held, "counsel does have a duty to contact a potential [alibi] witness unless counsel 'can make a rational decision that investigation is unnecessary.'" *Id*. (citation omitted); *see also Grooms*, 923 F.2d at 90 ("Once a defendant identifies potential alibi witnesses, it is unreasonable not to make some effort to contact them to ascertain whether their testimony would aid the defense."); *Griffin*, 970 F.2d at 1358 (finding "no reasonable excuse for failing . . . to secure the attendance of alibi witnesses" at trial). Like this case, *Montgomery* turned on "principles of law that have been settled since the Supreme Court's holding in *Strickland*[.]" *Id*. at 411.

The State attempts to distinguish these cases on various factual grounds. Pet. 6, 10, 14. But those distinctions are irrelevant. That Syed's trial counsel (who is long deceased, it so happens) did not explain *why* she failed to contact McClain, for example, makes no difference. *Strickland* and its progeny focus on counsel's "conduct" at the time, not after-the-fact rationalizations. 466 U.S. at 669; *see also* Op. 82 (recognizing that, in *Montgomery*, "counsel's lack of belief in" the defendant's alibi did not "serve as 'an adequate basis for ignoring such an important lead'") (quoting *Montgomery*, 846 F.2d at 414); *Griffin*, 970 F.2d at 1358 ("the 'cogent tactical considerations' that the state court bestowed on [counsel] . . . are exercises in retrospective sophistry"); *Grooms*, 923 F.2d at 90 (rejecting as an excuse counsel's post-hoc belief that the court would have excluded the alibi witness). This focus makes good sense; *Strickland* requires that the deficiency analysis be performed under "an objective standard[.]" 466 U.S. at 688. As a result, the Court of Special Appeals appropriately refused to require direct evidence of why Syed's

trial counsel subjectively believed that investigating McClain's potential testimony was unnecessary. Op. 88 n.37.

The State next attempts to distinguish the case law on which the Court of Special Appeals relied by arguing that trial counsel here "developed a different alibi defense[.]" Pet. 8. In addition to being factually incorrect, *see infra* at 12, that argument is equally unavailing. In *Montgomery*, counsel also "developed a different alibi defense" at trial, but still was found to have performed deficiently by failing to contact "the only disinterested witness in the case." 846 F.2d at 413.

Ultimately, the Court of Special Appeals simply followed a clear principle from *Montgomery* and related cases: "once a defendant identifies potential alibi witnesses, defense counsel has the duty to make some effort to contact them to ascertain whether their testimony would aid the defense." Op. 85 (internal quotations and citations omitted). This principle is consistent with the presumption in favor of counsel's performance. The Court of Special Appeals repeatedly acknowledged that its review must be "deferential[.]" *Id*. at 76 (quoting *Strickland*, 466 U.S. at 689); *see also id*. at 87, 93. But even deferential review has its limits: "under *Strickland*, the 'deference to counsel's judgments' is part of, but not controlling over, the requirement that 'a particular decision not to investigate must be directly assessed for reasonableness in all of the circumstances.'" *Id*. at 88 n.37. Here, counsel's decision plainly was unreasonable: "no reasonable evaluation of the advantages or disadvantages of McClain's alibi testimony" relative to other potential strategies "could be made without first contacting McClain." *Id*. at 89; *see also id*. at 91.

That holding as to Syed's particular facts does not, as the State suggests, impose some sweeping burden on defense attorneys. Pet. 6, 11. Much less is the burden a new one. Counsel's duty to investigate is triggered once a defendant provides the information necessary to identify a witness and "to suggest that the witness's testimony could provide the defendant with an alibi." Op. 86. These conditions will depend on the specific circumstances of each case. Here, Syed triggered this duty when he gave trial counsel letters that offered multiple ways of contacting McClain and stated that McClain was with Syed when the murder supposedly occurred. *Id*. at 86–87, 92.

Nor did the Court of Special Appeals' analysis end there. Upon finding that counsel had failed to contact McClain, it still asked "whether defense counsel's failure was deficient performance under the objective standard of a reasonably competent attorney acting under prevailing norms." *Id*. at 88 n.37. In this case, the court answered "yes," finding that "neither a review of the record nor the State's arguments provide a reasonable basis to justify such failure." *Id*. at 93; *see also id*. at 92 (rejecting the State's "argument" as "directly contrary to the facts in the record."). That is quite true: Syed adduced expert testimony that, under the circumstances, "trial counsel's performance 'was well below the minimum required by *Strickland*[.]'" *Id*. at 73 (quoting David B. Irwin, an expert in criminal practice).

The cases the State cites, Pet. 12–14, do not suggest a different result. Unlike here, where the record showed that trial counsel's failure to contact McClain was unreasonable, the evidence in the State's cases established that counsel's decision not to investigate was reasonable under the circumstances. In *Broadnax v. State*, for example,

the defendant had failed to inform counsel of his alibi before trial *and* had given several statements to police and his counsel offering a different alibi altogether. 130 So. 3d 1232, 1249, 1257 (Ala. Crim. App. 2013); *see also Commonwealth v. Rainey*, 928 A.2d 215, 233 (Pa. 2007) (failure to investigate reasonable where alibi defense could have allowed prosecution to introduce the defendant's otherwise suppressed confession); *Weeks v. Senkowski*, 275 F. Supp. 2d 331, 341 (E.D.N.Y. 2003) (failure to investigate reasonable where proposed alibi witnesses "were convicted of having participated in the same murders for which [defendant] was being tried"); *State v. Thomas*, 946 P.2d 140, 144 (Mont. 1997) (failure to interview *non*-alibi witnesses reasonable where none "could have provided exculpatory information"). Because the reasonableness inquiry under *Strickland* is case-specific, it is neither surprising nor cause for discretionary review that the Court of Special Appeals and the State's proffered cases reached different conclusions based on markedly different facts.

In short, the Court of Special Appeals did not create some novel, burdensome, and broadly-applicable test. It followed established Sixth Amendment principles in finding that, under the facts of this case, trial counsel performed deficiently in failing to contact and investigate McClain as an alibi witness. Review by this Court is unnecessary.

II. THE STATE SIMPLY SEEKS TO RE-LITIGATE THE PARTICULAR FACTS OF THIS CASE.

The State's Question Presented itself reveals the fact-bound nature of the Petition. It asks: "[w]hether the Court of Special Appeals erred in holding that defense counsel pursuing an alibi strategy without speaking to one specific potential witness of uncertain

significance violates the Sixth Amendment's guarantee of effective assistance of counsel." Pet. 3. That question features two resolved factual issues that the State seeks to re-litigate. It describes the significance of McClain's testimony as "uncertain[.]" *Id*. And it asserts that counsel presented an alibi strategy at trial independent of McClain. Neither of those is true.

The significance of McClain's testimony is not "uncertain" in the least. Both the Circuit Court and the Court of Special Appeals concluded that, had she testified, McClain "would have directly contradicted the State's theory of when Syed had the opportunity and did murder Hae." Op. 102; *see also* Cir. Ct. Op. 25.

As for counsel's trial strategy: first, the question in this case was whether counsel's investigation *before* trial was ineffective. As the Court of Special Appeals explained, that question is assessed separately from whether counsel's strategy at trial was otherwise reasonable. Op. 93 n.39. In any event, the State's assertion is false. As the Court of Special Appeals recognized, "in her opening statement and closing argument, trial counsel did not raise *any* alibi defense for Syed[,]" saying "*nothing* about Syed's whereabouts" during the time of the murder. *Id*. at 89 (emphases in the original). There is no need for a third layer of review of the State's fact-specific contentions.

Similarly, the State makes no effort to identify an issue of broad import in the analysis of the prejudice prong. Instead, the State admits that its complaint is simply that the Court of Special Appeals supposedly weighed the evidence incorrectly by "plac[ing] undue emphasis on" the timing of the murder. Pet. 15. The State is asking for mere error correction, and no error exists; as one would expect in a murder trial, the State

emphasized the time of the murder throughout, including in its opening and closing statements. Op. 96–99; *see also id*. at 89.

Based on the evidence before it, the Court of Special Appeals concluded that trial counsel's failure prejudiced Syed's defense. *Id*. at 102; *see also id*. at 100–03. There is no need for discretionary review of this well-founded conclusion. *See Skakel v. Comm'r of Correction*, No. 19251, 2018 WL 2104577, at *26 (Conn. May 4, 2018) (identifying this case as one of many finding that counsel's failure to "present the testimony of a credible, noncumulative, independent alibi witness" prejudiced the defense).

CONDITIONAL CROSS-PETITION

Should the Court grant the State's Petition, it should also grant Syed's Conditional Cross-Petition to review the Court of Special Appeals' ruling that Syed waived his allegation of ineffective assistance based on trial counsel's failure to challenge the reliability of cell-tower location data. The Court of Special Appeals' finding that the post-conviction statute did not require knowing and intelligent waiver of Syed's cell-tower claim contradicts this Court's interpretation of that statute in *Curtis v. State*, 284 Md. 132 (1978).

The Maryland Post-Conviction Procedure Act states that "an allegation of error is waived when a petitioner could have made but intelligently and knowingly failed to make the allegation" in a prior proceeding. Md. Code Ann., Crim. Proc. § 7-106(b)(1)(i). In *Curtis*, this Court interpreted the scope of this provision, finding that the legislature intended to require intelligent and knowing waiver of allegations of error premised on fundamental constitutional rights. 284 Md. at 148, 150 n.7. This Court specifically held

that one such allegation of error is that of ineffective assistance of counsel. *Id*. at 150–51. "It is settled that a criminal defendant cannot be precluded from having this issue considered because of his mere failure to raise the issue previously." *Id*. at 150.

Notwithstanding this precedent, the Court of Special Appeals held that Syed's ineffective-assistance claim relating to cell-tower location data was "based on a non-fundamental right for the purpose of waiver" and therefore was not subject to the statutory knowing and intelligent waiver standard. Op. 50–51. This holding is inconsistent with *Curtis*.

The Court of Special Appeals justified its departure from *Curtis* with a novel distinction between "the issue of a violation of a fundamental right"—which is subject to the statutory waiver standard—and "the grounds supporting such a claim"—which are not. *Id*. at 45. The Court of Special Appeals classified Syed's cell-tower claim as merely a "ground" supporting the issue of ineffective assistance and thus held that Syed waived the claim simply because he failed to raise it in a prior proceeding. *Id*. at 45, 50, 53.

This distinction between "issues" and "grounds" was erroneous for three reasons. First, the distinction has no basis in the statute. Section 7-106(b) orients the waiver rule around "allegations of error," not issues or grounds. And Syed's initial ineffective-assistance claims and his cell-tower claim are separate "allegations of error" within the plain meaning of that term. The reasonableness of trial counsel's decision not to use evidence to challenge the State's cell-tower expert, for instance, is an entirely separate question from the reasonableness of trial counsel's failure to contact an alibi witness. And each of the allegations, if true, would independently entitle Syed to relief under the post-

conviction statute. *Compare* Cir. Ct. Op. 59 (granting a new trial based on the cell-tower claim), *with* Op. 53, 104–105 (granting a new trial based on the alibi claim). Thus, the two claims are separate "allegations of error."

Second, the Court of Specials' distinction is inconsistent with how ineffective-assistance claims are analyzed in analogous contexts. For example, when applying the federal habeas exhaustion requirement—a concept similar to waiver—courts have held that ineffective-assistance claims with different factual predicates must be treated separately. *See Wood v. Ryan*, 693 F.3d 1104, 1120 (9th Cir. 2012) ("[A] general allegation of ineffective assistance of counsel is not sufficient to [satisfy the exhaustion requirement for] separate specific instances of ineffective assistance."); *Pole v. Randolph*, 570 F.3d 922, 934–935 (7th Cir. 2009) (ineffective-assistance claim premised on one set of facts does not "exhaust" claim premised on another).[2]

Third, the legislative history of the post-conviction statute does not support a distinction between "issues" and "grounds" as a means of limiting post-conviction proceedings. While the 1995 amendment limiting petitioners to one post-conviction petition indicates a concern with finality, Op. 51–52, the legislature also created a procedure for re-opening a petition and left unchanged the statutory waiver provision that, as interpreted in *Curtis*, requires intelligent and knowing waiver of allegations of

---

[2] *Arrington v. State*, 411 Md. 524 (2009) does not hold otherwise. Op. 46–49. That decision addressed whether a petition re-opened under Section 8-201 based on DNA evidence is a "prior petition" for purposes of waiver, not *Curtis* or the "intelligent and knowing" standard.

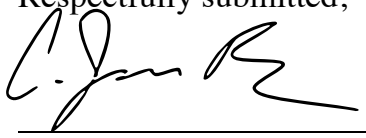
error premised on fundamental rights, trumping the general interest in finality in those narrow circumstances.

Properly viewed, Syed's cell-tower claim is a separate "allegation of error" from his other ineffective-assistance claims. Under *Curtis* and Section 7-106(b), this allegation of error can only be waived if Syed intelligently and knowingly failed to raise it in a prior proceeding. He did not. The Court of Special Appeals' decision to the contrary warrants this Court's review, in the event the State's Petition is granted.

CONCLUSION

For the foregoing reasons, the State's petition should be denied. If the State's petition is granted, Respondent's cross-petition should similarly be granted.

Respectfully submitted,

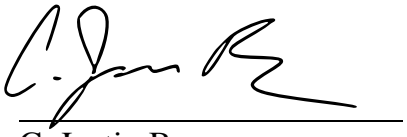


C. Justin Brown
BROWN LAW
231 East Baltimore Street, Suite1102
Baltimore, Maryland 21202
Tel: 410-244-5444
Fax: 410-934-3208
brown@cjbrownlaw.com

Catherine E. Stetson (*pro hac vice* pending)
James W. Clayton (admitted *pro hac vice*)
Kathryn M. Ali (admitted *pro hac vice*)
W. David Maxwell (admitted *pro hac vice*)
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
Tel: 202-637-5491
Fax:202-637-5910
cate.stetson@hoganlovells.com

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH MARYLAND RULES

Pursuant to Maryland Rule 8-504(a)(8), Respondent states that this brief was prepared in Times New Roman 13-point font. Further, this brief complies with the font, margin, and line spacing requirements of Maryland Rule 8-112; and contains 3,900 words.



C. Justin Brown

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Answer in Opposition to Petition for Writ of Certiorari with Conditional Cross-Petition were delivered by first-class mail, postage prepaid, this 29th day of May, 2018 to:

Thiruvendran Vignarajah
DLA Piper LLP (US)
100 Light Street, Suite 1350
Baltimore, Maryland 2102

Brian E. Frosh
Attorney General of Maryland
200 St. Paul Place
Baltimore, Maryland 21202

C. Justin Brown