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Recent Developments: State v. Syed

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RECENT DEVELOPMENT

STATE V. SYED: A DEFENDANT IS NOT PREJUDICED WHEN COUNSEL FAILS TO INVESTIGATE AN ALIBI WITNESS UNLESS THERE IS SUBSTANTIAL POSSIBILITY THE TESTIMONY WOULD HAVE AFFECTED THE VERDICT.

By: Justin Ellis

The Court of Appeals of Maryland held that prevailing professional norms obligated defense counsel to investigate a provided alibi witness and that not doing so was deficient. *State v. Syed*, 463 Md. 60, 96, 204 A.3d 139, 153 (2019). However, the defendant was not prejudiced by this deficiency because there was not a significant or substantial possibility that a jury would have reached a different verdict given the potential testimony compared to the totality of the evidence. *Id.* 93, 205 A.3d at 158. Additionally, the court held that the defendant waived his claim of ineffective assistance of counsel by not including the basis in his original petition for post-conviction relief. *Id.* at 105, 204 A.3d at 165.

Adnan Syed (“Syed”) was convicted on February 25, 2000, by the Circuit Court of Baltimore City for the first-degree murder of Hae Min Lee (“Lee”), as well as other charges. The State’s case comprised of both direct and circumstantial evidence that focused on the timeline of Syed’s actions on the day of the murder. Some of the most compelling evidence came from the testimony of Jay Wilds (“Wilds”) and cell phone tower data. Wilds testified that on January 13, 1999: Syed had threatened to kill Lee, that he saw Lee dead in the trunk of her car, that Syed bragged he had strangled her, and that Wilds assisted Syed to bury the body in Leakin Park. The State then introduced cell phone tower data that showed Syed’s cell phone in Leakin Park when it received two calls at 7:09 PM and 7:16 PM, the timeframe Wilds testified they were burying the body.

While awaiting his initial trial, Syed provided his defense counsel with a possible alibi witness, Asia McClain (“McClain”). McClain wrote Syed a letter dated March 1, 1999, offering to help account for his whereabouts on the day of the murder. The letter stated that she talked to Syed at the Woodlawn Public Library between 2:30 and 2:40 PM. However, Syed’s defense counsel failed to investigate McClain’s claim before the trial began.

After his conviction in February 2000, Syed filed a timely direct appeal to the Court of Special Appeals of Maryland, where the conviction was affirmed. Ten years later, Syed then filed a petition for post-conviction relief alleging he had received ineffective counsel, advancing nine bases to support his claim. A post-conviction hearing occurred in October 2012, that

concluded with the court denying relief on January 6, 2014. Syed then filed a timely application for leave to appeal requesting that the Court of Special Appeals of Maryland remand the case to consider an affidavit from McClain. The application was granted, and the case was remanded.

At this point, Syed advanced for the first time a claim of ineffective counsel based on his defense attorney's failure to challenge cell tower evidence at trial. At the completion of the hearing, the post-conviction court held that while Syed's trial counsel was deficient for not investigating McClain as an alibi witness, he did not suffer prejudice despite this deficiency. However, the court held that Syed did not knowingly and intelligently waive his ineffective counsel claim. Therefore, the court vacated the convictions and granted a new trial, which the State appealed.

The Court of Special of Appeals of Maryland reviewed the order of the post-conviction court and agreed that Syed's defense counsel was deficient by not investigating McClain as an alibi witness. The Court of Special Appeals differentiated from the lower court's holding that the deficiency prejudiced Syed. Nonetheless, the court held that Syed was precluded from advancing his ineffective counsel because it was not one of the nine bases in the original post-conviction petition. The State then filed a petition for *writ of certiorari* while Syed filed a conditional cross-petition for *writ of certiorari*, both of which were granted by the Court of Appeals of Maryland.

In order to determine if there is a Sixth Amendment violation due to ineffective counsel, the Court of Appeals applied the two-prong test established by the Supreme Court in *Strickland v. Washington*. *Syed*, 463 Md. at 74-75, 204 A.3d at 147. The test requires that the defendant must demonstrate that their counsel performed deficiently and that the deficient performance created prejudice. *Id.* at 75, 204 A.3d 147. The court held that prevailing professional norms obligated Syed's defense counsel to investigate McClain as an alibi witness and not doing so fell below the reasonable standard of judgment. *Id.* at 82, 204 A.3d at 152. Subsequently, the court did not find any evidence to support the premise that not investigating McClain was a tactical decision or part of the trial strategy. *Id.* at 84, 204 A.3d at 153. The State argued that when a record is silent concerning trial strategy, that deference is given to the attorney and relief should be denied. *Id.* at 85, 204 A.3d at 153. The Court of Appeals rejected this argument holding that the inability of Syed's trial counsel to explain her trial strategy, due to her death, should not be held against him. *Id.*

After finding the defense counsel deficient, the Court of Appeals then examined whether Syed was prejudiced by the deficient performance. *Syed*, 463 Md. at 86-87, 204 A.3d at 154. When determining if a defendant is prejudiced, a court will consider whether or not the verdict would have been different if not for the deficient performance. *Id.* at 86, 204 A.3d at 154. The

court found that the possible testimony of McClain would have contradicted Syed's statements to police and testimony, impacting his credibility. *Id.* at 93, 204 A.3d at 158. Further, the court determined the possible testimony would not have undermined the State's case consisting of direct and circumstantial evidence and relying heavily on the testimony of Wilds. *Id.* Therefore, the Court of Appeals of Maryland held that Syed was not prejudiced by his defense counsel's deficient performance because, given the totality of the evidence, the possible testimony from McClain did not provide a significant or substantial possibility of a different verdict. *Id.* at 93-94, 204 A.3d at 158.

The Court of Appeals then considered whether Syed knowingly and intelligently waived his claim of ineffective counsel. *Syed*, 463 Md. at 97, 204 A.3d at 161. The Uniform Postconviction Procedure Act ("UPPA") provides that if a cognizable claim is not included in the petition for post-conviction relief, there is a presumption of knowing and intelligent waiver. *Id.* at 98-99, 204 A.3d at 161-62. Syed argued his claim was premised on a fundamental right, thus requiring an affirmative knowing and intelligent waiver that is unable to be presumed. *Id.* at 97, 204 A.3d at 161. The court disagreed that Syed's claim was fundamental and affirmed the holding of the Special Court of Appeals. *Id.* at 103, 204 A.3d at 164. Accordingly, Syed was precluded from raising a claim of ineffective counsel for failure to challenge cell tower evidence due to this presumption. *Id.* at 105, 204 A.3d at 165.

The dissent differed from the majority finding that Syed was prejudiced by deficient counsel. *Syed*, 463 Md. at 135, 204 A.3d at 183. When the State's case is primarily based on a timeline of events, the dissent argued that any evidence that could break the chain of events, which could also create reasonable doubt in a juror. *Id.* at 139, 204 A.3d at 185. Specifically, the State failed to offer direct evidence to account for Syed's whereabouts at their determined time of death for Lee. *Id.* at 138, 204 A.3d at 184-85. McClain's testimony would have placed Syed in a different location from Lee at the estimated time of her death. *Id.* at 140, 204 A.3d at 186. The dissent argues that the jurors not hearing this testimony could have had a significant effect on their decision. *Id.* at 141, 204 A.3d at 187. Therefore, the dissent would have affirmed the ruling of the Court of Special Appeals. *Id.*

In *State v Syed*, the Court of Appeals found that the failure by defense counsel to investigate a provided alibi witness constitutes a deficient performance under the definition provided in *Strickland*. This ruling is significant because it reinforces the duty of defense attorneys to investigate all possible alibi witnesses. While it does not specify that every alibi witness must be interviewed, defense counsel is required to investigate the witnesses. The holding also affirms permitting only one petition for post-conviction

relief from a defendant. This draws a comparison to one *writ of habeas corpus* at the federal level. Permitting one petition is important for judicial economy and the efficiency of the courts, as well as having a sense of finality in criminal cases.