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# QUAN A. SOYINI *v.* COMMISSIONER OF CORRECTION (AC 45712)

Prescott, Clark and Seeley, Js.*

*Syllabus*

The petitioner, who had been convicted of being an accessory to murder and conspiracy to commit murder, sought a writ of habeas corpus, claiming, inter alia, that his trial counsel, G, rendered ineffective assistance because he failed to move to suppress certain evidence that the police extracted from the petitioner's cell phone prior to obtaining a valid search warrant and the fruits of the purportedly unconstitutional search. The victim allegedly had robbed the petitioner at gunpoint and, approximately one week later, when the petitioner located the victim, he called his brother, K, and asked him to meet at the victim's location. After chasing the victim into a school parking lot, K shot and killed the victim. After the petitioner's arrest, the police prepared a search and seizure warrant in which they sought the petitioner's cell phone records from his provider and to conduct a physical search of his cell phone, which they had taken into their custody. After the prosecutor signed the search warrant, but before a judge signed it, a police officer attached the cell phone to a mechanical device to begin the process of extracting information from the petitioner's cell phone, a process that would take several hours. There was no evidence that any person reviewed any data from the petitioner's cell phone prior to the judge signing and approving the warrant. At the criminal trial, the lead detective, F, testified about the number and duration of the phone calls between the petitioner and K, which he testified were obtained from phone records that had been subpoenaed, but he did not distinguish between information obtained from the physical examination of the petitioner's phone and from the provider records that had also been sought. The records showed that the petitioner had called K right before the murder of the victim. There was no objection to this testimony and the phone records were not introduced into evidence at the trial by either party. On cross-examination, G did not question F about the phone records. The habeas court denied the petition for a writ of habeas corpus, finding that the petitioner had failed to establish that G rendered deficient performance or that the petitioner was prejudiced by any of G's alleged errors. On the granting of certification to appeal, the petitioner appealed to this court, contending, inter alia, that F's testimony prejudiced him because it corroborated the state's theory of the case that the petitioner had called K to the scene and entered a conspiracy with K to kill the victim. *Held* that the petitioner could not prevail on his claim that the habeas court improperly concluded that his right to the effective assistance of counsel was not violated on the basis of G's failure to move to suppress evidence extracted by the police from the petitioner's cell phone prior to obtaining a valid search warrant, this court having been unpersuaded that G's decision not to seek suppression of the cell phone data was constitutionally deficient: the petitioner did not call G to testify at the habeas trial and, accordingly, the habeas record failed to reflect what information G may have learned regarding other evidence that the state had in its possession with respect to the phone calls made between the petitioner and K or the timing of the search of the cell phone and the signing of the warrant by the judge, and the record contained no explanation by G for not moving to suppress the cell phone data that the police extracted from the petitioner's cell phone; moreover, reasonable strategic reasons existed as to why G may have chosen not to pursue a motion to suppress, including that, in addition to having the petitioner's cell phone data, the police also had obtained and examined K's cell phone, and, if G had been privy to this information through discovery or a review of the police file, it would have been objectively reasonable for G to have concluded that there was no benefit in seeking to suppress the petitioner's cell phone data because the state could have obtained the same information about the timing of the calls from data obtained

from K's cell phone; furthermore, in light of F's trial testimony, it reasonably could be inferred that the police had multiple sources regarding the petitioner's cell phone usage, including the petitioner's cell phone service provider; additionally, even if G's failure to move to suppress the petitioner's cell phone data constituted deficient performance, the petitioner failed to meet his burden of demonstrating prejudice, as the petitioner's cell phone data was not offered by the state as evidence at trial and, to the extent that the fruits of that cell phone data search arguably were admitted in the form of F's trial testimony, that information merely corroborated other evidence before the jury, including the testimony of K and K's former girlfriend that the petitioner had called K to tell him that he had located the victim and that K then went to the location at the request of the petitioner, and the petitioner's own statement to the police indicating that he had been searching for the victim and that he was at the school with K around the time of the murder.

Argued September 21—officially released November 21, 2023

*Procedural History*

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Cobb*, *J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

*Vishal K. Garg*, assigned counsel, for the appellant (petitioner).

*Kathryn W. Bare*, executive assistant state's attorney, with whom, on the brief, were *Sharmese Walcott*, state's attorney, and *Jo Anne Sulik*, senior assistant state's attorney, for the appellee (respondent).

*Opinion*

PRESCOTT, J. The petitioner, Quan A. Soyini, appeals from the judgment of the habeas court denying his petition for a writ of habeas corpus.[1] In his petition, he asserted that his underlying conviction is invalid because his constitutional rights not to be subjected to an unreasonable warrantless search of his cell phone, to due process, and to the effective assistance of trial and appellate counsel were violated. On appeal, the petitioner claims that the court improperly concluded that his right to the effective assistance of trial counsel was not violated on the basis of counsel's failure to move to suppress certain evidence that the police extracted from the petitioner's cell phone prior to obtaining a valid search warrant and the "fruits" of the purportedly unconstitutional search.[2] We disagree and affirm the judgment of the habeas court.

The facts underlying the petitioner's criminal conviction as an accessory to murder in violation of General Statutes §§ 53a-8 and 53a-54a and for conspiracy to commit murder in violation of General Statutes §§ 53a-48 and 53a-54a were set forth by this court in our prior decision affirming the judgment of conviction. See *State* v. *Soyini*, 180 Conn. App. 205, 183 A.3d 42, cert. denied, 328 Conn. 935, 183 A.3d 1174 (2018). "In early July, 2013, the [petitioner] and his brothers, Kunta Soyini (Kunta) and Quincy Soyini (Quincy), attended the funeral of their father. At the funeral, the [petitioner] revealed to Quincy that he had been robbed at gunpoint while selling marijuana to the victim, Chimer Gordon. On the day of the robbery, the [petitioner] had asked Kunta to help him find the victim, but the two brothers were unable to locate him.

"Subsequently, on July 10, 2013, at approximately 10 a.m., the [petitioner] saw the victim and called Kunta. Kunta drove to the [petitioner's] location on Vine Street in Hartford. At that time, the [petitioner] was driving a black Audi. Both Kunta and the [petitioner] searched for the victim.

"At some point, the victim became fearful and ran into the house of Robert Davis and Gussie Mae Davis, which was located on Greenfield Street. After apologizing for the intrusion, the victim stated to the Davises that '*they* was trying to kill' him and that if he called the police '*they're* gonna kill my family.' . . . Gussie Mae Davis called 911, reporting that the victim, after entering her home, had stated that '*guys* was after him to kill him.' . . . The victim, after exiting the residence, ran into the parking lot of the Thirman Milner School (school), which is located behind the Davises' house. Moments later, the [petitioner] drove up to the house and asked Robert Davis if 'a guy' had run through the house.

"At this point, Kunta drove down Magnolia Street and

saw the victim, who was wearing clothing that matched the description he had received from the [petitioner]. Kunta had no prior or pending disagreements with the victim and did not know him at all. Kunta exited his motor vehicle, walked through the school parking lot and approached the victim, who was crouched between parked cars. Kunta walked through the parking lot in the direction of the victim while talking on a cell phone and with his left hand in his pocket. Kunta then faced the victim and, when he was at a distance greater than one car length, removed a firearm from his left pants pocket. The victim was tying his shoe as Kunta aimed the firearm at him. The victim then turned to his left, got up and ran. While pursuing him, Kunta shot at the victim from close range, but missed. Kunta continued to chase the victim as he ran through the parking lot.

"A few moments later, the [petitioner], wearing a black T-shirt, black and red shorts, black ankle length socks and flip-flops, walked through the school parking lot in the opposite direction from Kunta. As Roderick Maxwell, a special police officer employed by the Hartford Board of Education, investigated the noises that he had heard, he encountered the [petitioner]. The [petitioner] told Maxwell, 'don't worry about a thing.'

"The victim unsuccessfully attempted to scale a gate. Kunta then shot the victim in the chest, got in his car, and drove away. Maxwell heard Kunta emit a 'ghastly, nightmarish laugh' as he left the area.

"Jay Montrose, a Hartford police officer, responded to the 911 call. Montrose spoke with the Davises and then went outside, where he learned from Maxwell that the victim was lying on the ground near a fence. After driving his police vehicle into the school's parking lot, Montrose observed that the victim had suffered a gunshot wound and had lost a fair amount of blood. Montrose commenced resuscitation efforts on the victim. Medical personnel arrived shortly thereafter and transported the victim to a hospital, but he succumbed to his injuries and died.

"Reginald Early, a sergeant in the Hartford Police Department, was assigned to investigate th[e] homicide. He reviewed a video recording of the school parking lot. Early also learned that a black Audi had been circling the neighborhood prior to the shooting. The [petitioner] was inside the car when investigating officers located the black Audi approximately one block from the school. The officers arrested the [petitioner] on an unrelated charge of possession of marijuana with intent to sell. Early concluded that the [petitioner] was wearing the same clothes as the person on the video recording who had walked through the school parking lot shortly after the initial shooting.

"Joseph Fargnoli, a Hartford police detective, interviewed the [petitioner] following his arrest. He showed

the recording from the school parking lot to the [petitioner], who confirmed that he and Kunta were the men in the recording. The [petitioner] denied knowing the victim or how he had died. The [petitioner] did, however, admit that he had spoken to an 'old guy' on Greenfield Street that morning, asking if a 'kid' had run through the house.

"Fargnoli, who had examined the [petitioner's] cell phone records, determined that the [petitioner] had called Kunta first on the day of the shooting.[3] The [petitioner], however, stated during his interview that Kunta had called him first, asking the [petitioner] to 'come over . . . .'

"On the morning of the shooting, Kunta had driven his girlfriend, Shumia Brown, to work in Bloomfield at 4 a.m. Kunta was supposed to pick Brown up at 11 a.m., but was late. When he finally arrived, Brown voiced her displeasure with his tardiness, particularly because Kunta was using her motor vehicle. He explained that he 'got caught up in some mess with [the petitioner]' but did not elaborate.

"Later that day, Kunta told Brown that the [petitioner] had called him and instructed that they meet on Vine Street because the [petitioner] 'ran into who had robbed him before.' After traveling home, Kunta and Brown watched the afternoon news, and there was a story about the shooting at the school. Brown observed that Kunta started acting 'funny' and not 'like himself.' Brown asked if Kunta and the [petitioner] had anything to do with the shooting, and he hesitated in his response. At that point, Brown believed that Kunta had been involved in the shooting. Kunta then admitted to his involvement in the shooting. Additionally, at a later date, Kunta stated, during a phone conversation with Brown, that he had gotten 'involved in some drama behind [the petitioner].'

"Following the [petitioner's] arrest, Kunta fled to Virginia. He eventually was taken into custody by United States marshals and returned to Connecticut. Following his return, Kunta pleaded guilty to murdering the victim. In a statement to the police, Kunta noted that on the day of the shooting, the [petitioner] had found the victim 'walking around' and called to request that Kunta 'help him.'

"In an information dated May 27, 2015, the state charged the [petitioner] with being an accessory to murder and conspiracy to commit murder. The [petitioner] pleaded not guilty, and his trial spanned several days in July, 2015. The jury found him guilty on both counts. The [petitioner] received a total effective sentence of seventy years [of] incarceration . . . ." (Emphasis in original; footnote added; footnotes omitted.) *State* v. *Soyini*, supra, 180 Conn. App. 208–13. The petitioner filed a direct appeal in which he claimed that there

was insufficient evidence to convict him on either the conspiracy or accessory charge and that the court gave improper jury instructions, including an unwarranted special credibility instruction on accomplice testimony. Id., 207–208. This court affirmed the judgment of conviction; id., 208; and our Supreme Court denied further review. *State* v. *Soyini*, 328 Conn. 935, 183 A.3d 1174 (2018).

During the pendency of his direct criminal appeal, the petitioner commenced the underlying habeas action. He later filed his five count, second amended petition on March 16, 2020. The petitioner alleged in counts one and two that his conviction was obtained in violation of the fourth amendment to the United States constitution because the police conducted an unreasonable warrantless search of his cell phone and later submitted a warrant application that included a "false statement" in that the police requested to search the petitioner's cell phone despite having already completed the search. In count three, he alleged that his trial counsel was ineffective in a number of ways related to the physical search of his cell phone, including by failing (1) to challenge the validity of the search warrant, (2) to move to suppress the information obtained from the cell phone, (3) to object to the admission of the cell phone information at trial, (4) to seek to preclude testimony related to the cell phone records, and (5) to adequately cross-examine Fargnoli regarding the cell phone records. The petitioner alleged in count four that his appellate counsel was ineffective for failing to raise a claim in his direct criminal appeal that the police had violated his fourth amendment rights by searching his cell phone without a valid warrant. Finally, count five alleged violations of the petitioner's right to due process.[4]

The habeas court, *Cobb*, *J.*, conducted a trial over three days in May, 2021. The petitioner submitted a number of exhibits and presented as witnesses his appellate counsel, Tejas Bhatt; and current and former Hartford police officers Early, Daniel Richter, Dennis DeMatteo, Renee LaMark Muir, Christopher Reeder, Denise Mendoza, and Andrew Weaver. Counsel for the respondent, the Commissioner of Correction, cross-examined various of these witnesses but called no additional witnesses. The petitioner did not testify, nor did he present testimony from his criminal trial counsel, William Gerace (trial counsel).[5] Fargnoli also was not called to testify at the habeas trial. The parties each filed a posttrial brief.

The petitioner's habeas claims centered on the physical search of his cell phone, which he asserted was conducted unreasonably and without a valid search warrant. With respect to that issue, the habeas court found the following additional facts: "Based on a surveillance video and eyewitness accounts, at about 1:25

p.m. on July 10, 2013, a few hours after the shooting, the police located the petitioner in his black Audi vehicle a few blocks from where the shooting occurred. After smelling marijuana in the petitioner's car, the police searched the petitioner's vehicle and found marijuana. The petitioner was arrested for possession and searched, at which time the police located the petitioner's black [Kyocera] C5133 cell phone, which they took into possession.

"At the police station, the petitioner was interviewed for several hours between 3:25 and 11:55 p.m. During the interview, the petitioner admitted that he and his brother Kunta spoke several times by phone that morning, around the time of the shooting, while he was driving his black Audi beginning around 10 a.m. He also admitted that he approached the Davises' house and asked about 'the kid' that ran into their house. He admitted to being in the location of the shooting and parking his car to look for his brother. The petitioner also identified himself and his brother on the surveillance video. The petitioner then signed a voluntary statement under oath attesting to these facts.

"The police prepared a search and seizure warrant on July 10, 2013, in which they sought the petitioner's cell phone records from his provider, Sprint/Nextel Communications, and to conduct a physical search of the petitioner's cell phone, which they had taken into their custody. In particular, the warrant provided: 'Any and all cell phone account information associated with [the petitioner's] cell phone number . . . including, but not limited to all subscriber information, to include records of dates and times of any and all incoming and outgoing cell and telephone numbers, text messaging records, [I]nternet records, any additional telephone and cell phone numbers associated with the account, and account identification, account history to include any and all master cell phone and billing records and cellular site tower information and a Call Detail Report (CDR) for the period of December 22, 2012 at 1200 hours through December 23, 2012, at 1200 hours, inclusive. For the period July 3, 2013, at 0001 hours through July 10, 2013, at 1330 hours, inclusive. A physical exam of the black Kyocera C5133 Event cell phone device and any memory card contained with the device using Celebrite UFED machine updated with manufacturer revisions.' . . .

"After having the search warrant signed by the prosecutor, at some point prior to 3:40 p.m., [Fargnoli] brought the petitioner's cell phone to [Weaver] . . . who specialized in computer and cell phone forensics. [Fargnoli] told [Weaver] that the state's attorney had approved the physical search [of] the petitioner's cell phone using the Celebrite UFED machine and that the prosecutor was taking the warrant to a judge for final approval. [Weaver] attached the petitioner's phone to

the Celebrite machine to begin the extraction of the information, just after receiving the petitioner's cell phone at 3:40 p.m. and prior to the warrant being signed by the court. [Weaver] then left the station for the day. He did so, knowing that the extraction process would take several hours to complete and that he would obtain the data from the phone the next day when he returned to the police station. The court, *Vitale*, *J.*, signed the search warrant at 4:48 p.m. on July 10, 2013. There is no evidence that any person reviewed any data from the petitioner's cell phone prior to Judge Vitale signing and approving the warrant.

"The Celebrite search of the petitioner's cell phone . . . confirmed several calls between the petitioner and Kunta near the time of the shooting and [was] consistent with the petitioner's statement. . . .

"[Trial counsel] did not file any pretrial motions directed at the searches of the petitioner's cell phone and did not challenge the searches or cell phone data in any way during the trial. No direct testimony from [trial counsel] or any indirect testimony from any other source was presented at the habeas trial to establish whether he knew that the extraction process on the petitioner's phone began prior to the warrant being signed by a judge or, if he did know, why he decided not to challenge the warrant or the information obtained from it.

"At the criminal trial, [Fargnoli] testified about the number and duration of the phone calls between the petitioner and [Kunta], which he testified were obtained from 'phone records' that had been 'subpoenaed,' but did not distinguish between information from the physical examination of the petitioner's phone or from the provider records that were also sought. The records showed that the petitioner had called Kunta right before the murder of the victim. There was no objection to this testimony and the phone records were not introduced into evidence at the trial by either party. On cross-examination, [trial counsel] did not question [Fargnoli] about the phone records."

The habeas court denied the second amended petition for a writ of habeas corpus. With respect to the claim of ineffective assistance of trial counsel, the court determined that the petitioner failed to establish that trial counsel had rendered deficient performance or that the petitioner was prejudiced by any of trial counsel's alleged unprofessional errors.[6] In particular, the habeas court stated that, because the petitioner had failed to provide any evidence establishing what information his trial counsel knew regarding the search of the petitioner's cell phone or counsel's reasoning, or lack thereof, for failing to seek to suppress or otherwise challenge the cell phone evidence, the petitioner was unable to overcome the strong presumption that trial counsel provided effective assistance. With respect to the prejudice

prong, the court concluded that the data acquired from the cell phone regarding the time of incoming and outgoing calls and phone numbers was merely corroborative of other evidence that was admitted at trial, including the petitioner's own admissions that the petitioner and Kunta had been calling each other around the time of the shooting. Kunta also had testified at trial as to the substance of the phone calls, including that the petitioner told Kunta he had located the victim and asked Kunta for help.

Following the court's denial of his petition for a writ of habeas corpus, the petitioner filed a petition for certification to appeal, which the court granted. This appeal followed.

The petitioner's sole claim on appeal is that the habeas court improperly concluded that his right to the effective assistance of counsel was not violated on the basis of trial counsel's failure to move to suppress evidence extracted by the police from the petitioner's cell phone prior to obtaining a valid search warrant. The respondent responds that the court correctly denied the petitioner's ineffective assistance of trial counsel claim. We agree with the respondent.

The legal principles governing our review of the denial of a petition for a writ of habeas corpus alleging the ineffective assistance of counsel are well settled. "A criminal defendant's right to the effective assistance of counsel extends through the first appeal of right and is guaranteed by the sixth and fourteenth amendments to the United States constitution and by article first, § 8, of the Connecticut constitution. . . .[7] To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)]. *Strickland* requires that a petitioner satisfy both a performance prong and a prejudice prong." (Footnote in original; internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 197 Conn. App. 822, 829–30, 234 A.3d 78 (2020), aff'd, 341 Conn. 279, 267 A.3d 120 (2021). To satisfy the performance prong, "the petitioner must establish that his counsel made errors so serious that [counsel] was not functioning as the counsel guaranteed the [petitioner] by the [s]ixth [a]mendment. . . . The petitioner must thus show that counsel's representation fell below an objective standard of reasonableness considering all of the circumstances. . . . [A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. . . . Furthermore, the right to counsel is not the right to perfect counsel. . . .

"To satisfy the prejudice prong, a claimant must dem-

onstrate 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. . . . In its analysis, a reviewing court may look to the performance prong or to the prejudice prong, and the petitioner's failure to prove either is fatal to a habeas petition." (Citation omitted; internal quotation marks omitted.) *Foster* v. *Commissioner of Correction*, 217 Conn. App. 658, 667–68, 289 A.3d 1206 (2023).

"On appeal, [a]lthough the underlying historical facts found by the habeas court may not be disturbed unless they [are] clearly erroneous, whether those facts constituted a violation of the petitioner's rights [to the effective assistance of counsel] under the sixth amendment is a mixed determination of law and fact that requires the application of legal principles to the historical facts of [the] case. . . . As such, that question requires plenary review by this court unfettered by the clearly erroneous standard." (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, supra, 197 Conn. App. 830–31.

In the present matter, the habeas court concluded that the petitioner failed to establish both that trial counsel had rendered deficient performance by not moving to suppress the petitioner's cell phone data extracted by the police and that he was prejudiced by counsel's inaction. In light of the record before us, we agree with the habeas court that the petitioner has failed to satisfy both the performance and prejudice prongs of *Strickland*. The following additional facts are relevant to our analysis with respect to both prongs.

At the petitioner's criminal trial, Fargnoli, who was the lead detective in this matter, was called to testify about various evidence collected by the police. He also recounted portions of the petitioner's statements to the police following his arrest, including that the petitioner had identified himself and Kunta in the surveillance video taken from the school where the murder occurred but indicated that he was there because Kunta had phoned him. Fargnoli was asked the following questions by the prosecutor regarding cell phone evidence collected by the police:

"Q. Now, as part of your investigation in this case, were you able to establish phones for [Kunta] and [the petitioner]?

"A. Yes.

"Q. Were you able to examine phone records for those two individuals?

"A. Yes.

"Q. And were you able to establish phone calls that were made between [Kunta] and [the petitioner] on

that day?

"A. Yes.

* * *

"Q. [A]gain, were you able to look at phone records that had been subpoenaed as part of your investigation in this case?

"A. Yes.

"Q. And, in fact, were you able to establish who called who first that day?

"A. Yes.

"Q. And what . . . did the phone records establish?

"A. [The petitioner] had called [Kunta] immediately before the murder."

The state did not seek to have any cell phone data entered into evidence at the criminal trial.[8] The petitioner contends, however, that Fargnoli's testimony regarding the timing of the phone calls between Kunta and the petitioner on the day of the murder was the fruit of the allegedly unconstitutional extraction of data by the police from his cell phone, which trial counsel should have sought to suppress. Moreover, the petitioner contends that this testimony prejudiced the petitioner because it corroborated the state's theory of the case that the petitioner had called Kunta to the scene and entered into a conspiracy with Kunta to kill the victim.

It is axiomatic that the petitioner bears the burden of establishing that his trial counsel's performance was deficient. See *Eubanks* v. *Commissioner of Correction*, 329 Conn. 584, 603, 188 A.3d 702 (2018) (petitioner bears burden of proof as to whether counsel's behavior was objectively unreasonable). In the petitioner's reply brief, he succinctly states that, in considering whether his trial counsel's performance fell outside the wide boundary of professional norms, the habeas court was required "to examine counsel's defense strategy, assess the extent to which a motion to suppress would have supported or conflicted with that strategy, and *consider whether there might be alternative strategic justifications for counsel's actions*." (Emphasis added.)

In his main brief, the petitioner argues that his trial counsel "inexplicably chose not to challenge [the cell phone] evidence, thus allowing it to be admitted at trial. The evidence concerning the phone calls, which included the time, number, and which party initiated the call, was a crucial component of the state's case" and "no reasonable attorney would have forgone suppressing the evidence obtained from the petitioner's cell phone because no strategic reason justified forgoing a viable motion to suppress." The petitioner further argues in his reply brief that, if trial counsel had filed a pretrial motion to suppress, the petitioner also would

have benefitted from raising the issue of the admission of any cell phone evidence obtained from the search of the petitioner's cell phone outside the presence of the jury, thereby eliminating any risk of waiting to object during trial and potentially calling undue attention to the evidence in the minds of the jurors.

The petitioner, however, did not call trial counsel to testify at the habeas trial and, accordingly, the habeas record fails to reflect what information counsel may have learned regarding other evidence that the state had in its possession with respect to the phone calls made between the petitioner and Kunta. The record also contains no explanation by trial counsel for not moving to suppress the cell phone data that the police extracted from the petitioner's cell phone. We are thus required affirmatively to contemplate whether *any* objectively reasonable strategy existed for not filing a motion to suppress. See *Jordan* v. *Commissioner of Correction*, supra, 341 Conn. 291.

Our review of the record demonstrates that reasonable strategic reasons exist as to why trial counsel may have chosen not to pursue a motion to suppress, and the petitioner has failed to persuade us otherwise. As reflected in Fargnoli's trial testimony, in addition to having the petitioner's cell phone data, the police also had obtained and examined Kunta's cell phone. If trial counsel had been privy to this information through discovery or review of the police file, it would have been objectively reasonable for counsel to have concluded that there was no benefit in seeking to suppress the petitioner's cell phone data because the state could have obtained the same information about the timing of the calls from data obtained from Kunta's cell phone. In other words, trial counsel reasonably may have believed that the petitioner's cell phone data was cumulative. There was also some indication that the police had sought to obtain cell phone records from the petitioner's cell phone service provider, Sprint/Nextel Communications, which independently could have provided the police with the same information extracted from the petitioner's cell phone.

In seeking to demonstrate that trial counsel's inaction vis-à-vis the cell phone data was not objectively reasonable, the petitioner failed to present evidence regarding what information trial counsel knew at the time. Not only is the record unclear about what trial counsel may have known regarding other sources available to the state regarding the petitioner's cell phone use on the day of the murder, there is no evidence in the record regarding what, if anything, trial counsel knew about the timing of the search of the cell phone and the signing of the warrant by the judge. Given this evidentiary lacuna, and in light of Fargnoli's trial testimony, from which it reasonably can be inferred that the police had multiple sources regarding the petitioner's cell phone

usage, we are unpersuaded that trial counsel's decision not to seek suppression of the cell phone data was constitutionally deficient.

Moreover, even if we were to conclude that trial counsel's failure to move to suppress the petitioner's cell phone data constituted deficient performance, which we do not, we also agree with the habeas court's conclusion that the petitioner failed to meet his burden of demonstrating prejudice, which is independently fatal to his ineffective assistance claim.

The potential harm to the petitioner of the data extracted from his cell phone was that it showed that the petitioner and Kunta had spoken to each other by cell phone on the morning of the shooting, including the number and timing of such calls. Further, it showed that the petitioner called Kunta first. The petitioner's cell phone data, however, was not offered by the state as evidence at trial. Nevertheless, to the extent that the "fruits" of that cell phone data search arguably were admitted in the form of Fargnoli's trial testimony, that information, as the habeas court found, merely corroborated other evidence before the jury. Specifically, Kunta testified that the petitioner had called him to tell him that he had located the victim and that Kunta then went to the location at the request of the petitioner. The jury certainly was free to credit that testimony over the contrary testimony of the petitioner that Kunta called him first. Brown also provided testimony that the petitioner had called Kunta and asked him to meet the petitioner on Vine Street because the petitioner had located the person who previously had robbed him. The petitioner's own statement to the police indicated that he had been searching for the victim and that he was at the school with Kunta around the time of the murder. Therefore, even without the petitioner's cell phone data, there was ample other evidence before the jury from which it reasonably could have inferred that the petitioner had conspired with Kunta and aided him in the murder of the victim. Finally, as we have already indicated, it is reasonable to infer from Fargnoli's trial testimony that, even if trial counsel had successfully moved to suppress evidence related to the data extracted from the petitioner's cell phone, the same information would have been admitted into evidence either from information derived from Kunta's cell phone records or from records of the petitioner's cell phone provided to the police by the petitioner's cell phone carrier.

Accordingly, we cannot conclude on this record that if the cell phone data extracted from the petitioner's phone had been suppressed, there is a reasonable probability that the outcome of the trial would have been different. We therefore conclude that the habeas court properly found that the petitioner failed to satisfy *Strickland*'s prejudice prong.

The judgment is affirmed.

In this opinion the other judges concurred.

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

[1] The habeas court granted the petitioner certification to appeal from the judgment.

[2] The petitioner has not challenged on appeal the habeas court's judgment with respect to his claims of ineffective assistance of appellate counsel or his freestanding constitutional claims alleging that his conviction was obtained in violation of the fourth, fifth and fourteenth amendments to the United States constitution. Moreover, although his petition for a writ of habeas corpus contained several specifications of alleged deficient performance by trial counsel, the petitioner has limited his claim of ineffective assistance of trial counsel on appeal to counsel's failure to file a pretrial motion to suppress. We limit our discussion accordingly.

[3] At the criminal trial, Fargnoli testified that the phone records for both the petitioner and Kunta were available and reviewed by the police and that they established that, on the morning of the shooting, there were a total of five phone calls made between the petitioner and Kunta between 10:13 and 10:21 a.m.

[4] The respondent, the Commissioner of Correction, filed a return dated February 8, 2021, in which he generally denied the allegations in the petition. The respondent also asserted by way of special defense that counts one, two, and five were barred by procedural default because the petitioner failed to raise these freestanding constitutional claims at trial or on direct appeal. The petitioner filed a reply to the special defense in which he asserted that, if he proves his claims of ineffective assistance of prior counsel based on counsel's failure to raise his constitutional claims, this will satisfy the "cause and prejudice" test, thus overcoming any issue of procedural default, citing *Johnson* v. *Commissioner of Correction*, 285 Conn. 556, 570–71, 941 A.2d 248 (2008).

[5] The habeas court indicated in its decision that "[n]o evidence was produced to support a claim that [trial counsel] was unavailable to testify."

[6] Because the petitioner could not demonstrate ineffective assistance of trial counsel, the habeas court also concluded that he had failed to prove cause and prejudice necessary to overcome the procedural default of his freestanding constitutional claims.

[7] "[T]he state and federal constitutional standards for review of ineffective assistance of counsel claims are identical and the rights afforded are essentially coextensive in nature and, thus, do not require separate analysis." (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 197 Conn. App. 822, 830 n.8, 234 A.3d 78 (2020), aff'd, 341 Conn. 279, 267 A.3d 120 (2021).

[8] The petitioner's cell phone data was admitted at the habeas trial.