IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0411

ARZEL JONES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MARSHALL COUNTY
THE HONORABLE JAMES C. ELLEFSON, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Because this case involves the application of existing legal principles, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

Jones appeals the denial of his application for postconviction relief. *See* Ruling Denying Relief; App. 37–76. He argues (1) his appeal may be heard despite the fact he only filed a pro se notice of appeal, (2) the district court erred by finding he failed to show his trial counsel had provided ineffective assistance, (3) the district court abused its discretion by rejecting his request for defense services, and (4) the district court improperly prevented Jones from calling the victim and the trial prosecutor as witnesses at the PCR trial. The State submits this Court may grant Jones a delayed appeal, but that Jones's substantive claims should be rejected and the denial of his application for postconviction relief should be affirmed.

Course of Proceedings

The State accepts the applicant's description of the proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

The factual summary described by the Court of Appeals in Jones's direct appeal are sufficient for purposes of this PCR appeal:

> In the fall of 2007, Jones met M.P. at the bar where she worked. They began a sexual relationship shortly after meeting and saw each other on a daily basis throughout the fall.
>
> On November 30, 2007, M.P. arrived at Jones's residence to look at fire damage he claimed was on his kitchen wall. M.P. observed Jones rambling incoherently and pacing back and forth as he accused her of being unfaithful. After approximately one hour, Jones punched M.P. in the chest two or three times and slapped her across the face. M.P. was frightened and did not try to leave.
>
> At approximately 9:00 p.m., at the request of a friend of M.P., police officers arrived at Jones's apartment to conduct a "welfare check." While the police were at the door, Jones laid on top of M.P. with his hand over her mouth to prevent her from responding. The police went outside and looked at the windows and returned to knock on the door a second time. Jones pulled M.P. into his bedroom by her hair and again covered her mouth with his hand to prevent her from responding. Jones then forced her to call the police and her family to falsely report she was in Ames with a friend. Jones also told M.P. to call her employer and say she would not be at work because her grandmother was sick.
>
> Because M.P. did not want her family to see the physical reminders of the abuse, she elected to stay with Jones for the weekend until

she had to pick up her son on the afternoon of Monday, December 3, 2007. M.P. believed once the attack was over, Jones was sorry for what he'd done. He drove her to Walmart to get an ice pack to reduce the swelling of her injuries. M.P. engaged in consensual sexual activities with Jones during the weekend.

M.P. went to work on the night of December 3, a shift that extended into the early morning hours of December 4. At approximately 1:00 a.m., Jones came into the bar and had several drinks while staring at M.P. Jones purchased a six-pack of beer and left at 2:00 a.m., closing time. M.P. left work fearful Jones was waiting for her because he did not have a vehicle and his apartment was approximately a mile away. When she got in her car and started it, Jones jumped into the passenger seat and ordered her to drive to his apartment. Along the way, he told her to stop at a Kum & Go convenience store. When she parked the car, Jones took the keys from the ignition and went into the store. M.P. stayed in the car. Jones returned and ordered M.P. to change seats with him so he could drive. He did not take M.P. home as she requested, instead driving her to his apartment.

Upon arriving at the apartment, Jones locked the door and told M.P. to undress. Jones was again pacing back and forth while mumbling and calling her names. Jones forced her to lie down, took pictures of her crotch, and forced one finger into her anus and one into her vagina. Jones kicked M.P. in the face while wearing boots, causing bleeding and swelling to her lip. Jones dragged M.P. to the bathroom by her hair and told her to rinse her mouth with rubbing alcohol. Then he held a metal fork to

> her neck and forced her to perform oral sex on him, telling her to do it like her life depended on it. The forced oral sex continued for several hours with Jones stopping at times to pace and smoke a cigarette. At one point M.P. told him she could not do it anymore and tried to head for the door, but Jones grabbed her by the hair and pulled her back. Eventually, Jones choked M.P. and then forced her to have intercourse with him against her will.
>
> Jones drove M.P. to several medical clinics and the emergency room due to her swollen and bruised jaw. When he dropped her off at home on the afternoon of December 4, 2007, M.P. told her parents about the assault and sexual abuse, and they contacted police.

State v. Jones, No. 09-0146, 2011 WL 5444091, at *1–2 (Iowa Ct. App. Nov. 9, 2011), *vacated in part by State v. Jones*, 817 N.W.2d 11 (Iowa 2012).

ARGUMENT

I. This Court, in its Discretion, May Grant Jones a Delayed Appeal.

On October 6, 2021, the Iowa Supreme Court ordered the parties to brief whether there is jurisdiction to hear Jones's appeal because the appeal was initiated only by a pro se notice of appeal. *See* Sup. Ct. Order (Oct. 6, 2021). The order additionally ordered the parties to "brief the issue of whether a delayed appeal should be granted…." *Id.*

In his brief, Jones argued Iowa Code section 822.3A does not apply to pro se notices of appeal, and he asserted alternative arguments in the event the court found that it did. *See* Appellant's Br. at pp.14–21. In the alternative, Jones requested that the Court grant his request for a delayed appeal. *See* Appellant's Br. at pp.21–22.

Although the State submits there is no merit to Jones's arguments that section 822.3A does not apply to pro se notices of appeal, and that if it does it is unconstitutional, the State recognizes that it would still be appropriate for this Court to exercise its discretion and grant Jones a delayed appeal.

While the deadline for filing a notice of appeal is jurisdictional, this Court has recognized its inherent authority to grant delayed appeals in those instances where a valid due process argument might be advanced should the right of appeal be denied. *See Swanson v. State*, 406 N.W.2d 792, 793 (Iowa 1987). And this Court has granted a delayed appeal when trial counsel's procedural errors have denied a defendant's clearly expressed intention and good faith effort to appeal. *See State v. Anderson*, 308 N.W.2d 42, 46 (Iowa 1981).

After Jones filed his proof brief, the Iowa Supreme Court decided *State v. Davis*, No. 20-1244, ___ N.W.2d ___, 2022 WL

258191, at *1–4 (Iowa Jan. 28, 2022) and *State v. Jackson-Douglass*, No. 20-1530, ___ N.W.2d ___, 2022 WL 332824, at *2 (Iowa Feb. 4, 2022). In *Davis*, the Court declined to decide whether pro se notices of appeal are prohibited filings pursuant to Iowa Code section 814.6A (which is the nearly identical prohibition for pro se filings in criminal cases), and instead found a delayed appeal was appropriate. *Davis*, ___ N.W.2d at ___, 2022 WL 258191, at *1–4. First, the Court in both cases recognized a timely pro se notice of appeal itself was adequate to demonstrate a good faith intent to appeal. *Id.* at *3; *Jackson-Douglass*, ___ N.W.2d at ___, 2022 WL 332824, at *2. Second, when the Court in *Jackson-Douglass* applied the holding of *Davis*, the Court made clear that "counsel's failure to file a notice of appeal after the defendant unequivocally expressed an intent to do so is a circumstance outside the defendant's control and serves as grounds for allowing delayed appeal." *Jackson-Douglass*, ___ N.W.2d at ___, 2022 WL 332824, at *2.

Although both *Davis* and *Jackson-Douglass* were direct appeals, and not appeals from PCRs, the State believes[1] the two

[1] The State recognizes the Iowa Supreme Court has "not decided whether or under what circumstances a delayed appeal might be available in postconviction-relief actions." *Anderson v. State*, 962

identified conditions for granting a delayed appeal in the limited context of evaluating whether the court has jurisdiction following a pro se notice of appeal would appear to apply with equal effect. First, Jones expressed his good faith intent to appeal. His improperly filed "pro-se motion under *Lado v. State*" states that he is "requesting my appeal from my P.C.R. trial." Pro Se Mot. Under Lado v. State; App. 79. And the district court even acknowledged his request to appeal by filing an order stating, "The applicant has filed a notice of appeal." Order Appointing Appellate Counsel; App. 81–82. These filings, under *Davis*, are adequate to evince Jones's good faith intent to appeal. And applying *Davis* and *Jackson-Douglass*, PCR "counsel's failure to file a notice of appeal after the [applicant] unequivocally expressed an intent to do so is a circumstance outside the [applicant]'s control and serves as grounds for allowing delayed appeal." *Jackson-Douglass*, ___ N.W.2d at ___, 2022 WL 332824, at *2.

N.W.2d 760, 762–63 (Iowa 2021). But because *Jackson-Douglass* granted a delayed appeal based solely on the presence of the two identified conditions, without considering what rights may be implicated or denied, it appears in the limited context of pro se notices of appeal all that matters is the existence of the two conditions in order to grant a delayed appeal, which would seem to apply in a PCR.

Therefore, because Jones meets the same conditions identified in *Davis* and *Jackson-Douglass*, the State does not dispute that this Court may exercise its discretion to grant him a delayed appeal from the denial of his first application for postconviction relief. And because the grant of a delayed appeal evades the other questions on the applicability of section 822.3A, this Court need not analyze the remaining arguments Jones raised. *See Davis*, ____ N.W.2d at ____, 2022 WL 258191, at *3 ("We need not resolve these arguments to resolve the jurisdictional question presented. Even assuming section 814.6A prohibited Davis from filing a pro se notice of appeal while represented by counsel, we conclude Davis is entitled to seek a delayed appeal under the circumstances presented.").

II. The PCR Court did Not Err by Denying Jones's Claims of Ineffective Assistance of Trial Counsel.

Preservation of Error

The district court rejected Jones's argument that his trial counsel provided ineffective assistance. *See* Ruling Denying Relief; App. 37–76. The State does not contest error preservation.

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *State v. Thorndike*, 860 N.W.2d 316, 319 (Iowa 2015) (citing *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012)).

Merits

On appeal, Jones argues the PCR court erred by declining to find trial counsel ineffective on two grounds. First, Jones argues his trial counsel was ineffective for failing to examine or have DNA testing performed on a washcloth. *See* Appellant's Br. at pp.24–25. Second, Jones argues his trial counsel was ineffective for permitting the State to use photograph exhibits at trial without addressing an approximately 44-minute[2] gap in time between photographs of two forks located by police. *See* Appellant's Br. at pp.25–27. The State submits Jones failed to show his counsel provided ineffective assistance on both claims.

To establish ineffective assistance of counsel, "a defendant must typically show that (1) counsel failed to perform an essential duty and

[2] Various parts of the record refer to the gap in time as either 44, 45, or 46 minutes. For the sake of consistency, the State refers to the time gap as being 44 minutes to remain consistent with Jones's briefing. *See* Appellant's Br. at p.25.

(2) prejudice resulted." *State v. Keller*, 760 N.W.2d 451, 452 (Iowa 2009) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Both elements must be proven, and failure to prove a single element is fatal to the claim. "If the claim lacks prejudice, it can be decided on that ground alone without deciding whether the attorney performed deficiently." *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). The "crux of the prejudice component rests on whether the defendant has shown 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Whitsel v. State*, 439 N.W.2d 871, 873 (Iowa Ct. App. 1989) (*quoting Strickland*, 466 U.S. at 694).

Jones first argues his trial counsel should have examined or tested a washcloth that was held in evidence. *See* Appellant's Br. at pp.24–25. His argument primarily relies on his assertion that "[a]ssumedly, if the washcloth *did* contain blood as alleged by its key witness, the State would have presented it as evidence during trial." Appellant's Br. at p.25 (emphasis in original). And he asserts that had the washcloth been tested it would have exonerated him. Appellant's Br. at p.25. But Jones's argument is relying on unproven and unsupported hypotheticals. And our courts "will not predicate a

finding of ineffective assistance on speculation." *Gronstal v. State*, No. 15-2113, 2017 WL 512482, at *3 (Iowa Ct. App. Feb. 8, 2017).

The State first notes that trial counsel provided specific, valid explanations for why the physical evidence was not tested. First, as the district court credited in its findings, Jones's demand for a speedy trial undercut the possibility that DNA testing could be performed. *See* Ruling Denying Relief at pp.27–28 ("Applicant's insistence on a speedy trial would have rendered that independent testing impossible. … [DNA testing] would need to be completed by an independent lab and would take some time. It is unlikely such testing could have been completed within the speedy trial timeframe."). It can take many months to get results back from DNA testing, which would not have been feasible within the 90-day speedy trial window. *See* PCR T.Tr. Vol.II 70:22–71:2 (explaining DNA test results from DCI can take upwards of 18 months). Second, trial counsel explained they did not want to test the evidence for the strategic reasoning that if the evidence corroborated the victim's version of events it would have harmed Jones's case. *See* PCR T.Tr. Vol.I 130:18–:25, 132:19–133:2. The district court noted this rationale applied specifically for

the washcloth, and that the risk of testing the evidence would far outweigh any negligible benefit:

> [The victim] had been in his apartment on other occasions, and the presence of her DNA or absence of it would prove nothing.
>
> ...
>
> ... The presence of DNA would prove nothing. Presence of DNA by either Mr. Jones or [the victim] would prove nothing. The absence of DNA would prove nothing. And I think the washcloth is essentially subject to the same—same analysis.
>
> I think that what happened here is that a series of lawyers have made the judgment that running the DNA on the shoestring, hoodie string, two forks, washcloth, now the butter knife and the other item that we've talked about here, was a wonderful opportunity to help the State prove the criminal case and basically a high-risk operation that had very little potential benefit to Mr. Jones....

PCR T.Tr. Vol.III 50:–51:2; *see* PCR T.Tr. Vol.III 50:21–108:2–:20 ("It strikes me that [trial counsel] might not have raised it because it was either not important or it was a great opportunity to help the State convict their client, or maybe a little bit of both."). And Jones has failed to refute this sound strategic rationale, and his claim thus fails.

Even if Jones's counsel had not provided valid strategic rationales for declining to test the evidence, the State submits it would have been pointless for counsel to have examined or tested the washcloth and doing so would not have changed the outcome. Jones admitted a police report from an investigating detective as exhibit 31 at the PCR hearing. *See* State's Ex. XXX (Hengeveld Report); App. 89–90. That police report includes the victim's statement about the washcloth which is consistent with the conclusion that there would *not* be blood on it:

> She told me the injury was bad enough that there was blood dripping from her face. She washed the blood off her face. She said the water was dripping all over, *but did not think she used a rag or towel to clean up blood*. She spit blood in the bathroom sink.

State's Ex. XXX (Hengeveld Report) at p.1 (emphasis added); App. 89. And the victim testified consistently with this statement at trial, stating she did *not* use a washcloth or rag to wipe the blood off, and that Jones did *not* use a washcloth when he washed her:

> Q. Did you wash the blood off with a towel? A. No.
>
> Q. Did you wash your hands with a towel? A. No.

Q. Why not? A. I just washed them off with the water in the sink, the bathroom sink, where I was rinsing.

Q. Do you didn't touch any towels? A. No.

...

Q. And do you remember telling Officer Hengeveld that you washed your mouth with a rag at that time? A. No, I don't.

Q. That you washed off with a rag? A. No, I don't remember.

Q. And that you were spitting blood into the sink? A. I remember saying spitting blood into the sink.

Q. And there was water dripping from the sink all over the place? A. Yes.

Q. And that you didn't clean up the sink, you don't know if you had a towel or if you cleaned it up at all, right? A. I didn't clean it up.

...

Q. When Arzel got into the shower with you, you testified that he washed you? A. Yes.

Q. What did he use to wash you? A. Bar of soap.

Q. A bar of soap? A. His hand.

Q. What's that? A. Bar of soap, his hand.

> Q. Okay. No washcloth? A. Not that I remember. I don't know.

Underlying T.Tr. Vol.II 77:22–78:5, 79:18–:21, 135:6–:21, 149:13–:23. Thus, even if the examination and testing came back consistent with Jones's assertion that there was no blood or DNA on the washcloth, this would not have been inconsistent with the evidence or the victim's earlier statement to the police. Counsel did not breach a duty and the outcome is not undermined. Jones's speculative claim should be rejected.

The State also notes that because the washcloth has still never been tested, Jones's assertion that it would potentially exonerate him should be viewed with great skepticism because it is pure speculation as to what tests of the washcloth would or would not reveal. And even if the washcloth were found to have no DNA or blood, that alone is inadequate to refute the simple possibility that the police did not locate another washcloth, rag, or towel that would have. Jones's presumptions that there would be an absence of blood, and his presumption that would somehow exonerate him, is inadequate to prove a claim that trial counsel performed deficiently.

Jones next argues his trial counsel was ineffective for failing to address a 44-minute gap between photos of evidence located at his

residence. *See* Appellant's Br. at pp.25–27. The State submits the record presented at the PCR hearing entirely undermines Jones's implication that anything improper occurred during the intervening 44-minute gap in time.

During the PCR trial there was extensive testimony about the 44-minute gap between the photos. However, this testimony all undercuts Jones's argument because it was well established that a 44-minute gap is ordinary and common during crime scene investigations.

Crime Scene Technician Courtney Watson—who was not involved in the original investigation whatsoever—testified that "It's very typical to see gaps or lapses in time between photos" at a crime scene. PCR T.Tr. Vol.III 156:22–157:17. She elaborated on the various reasons why a time lapse between crime scene photographs would ordinarily occur:

> There's actually many reasons. You may be collecting evidence. You may be speaking to a victim, an officer. You may be waiting for a room to be cleared. You may be, you know, gather equipment. You might have to run to your vehicle for something. There's just—there's a whole list of reasons why there may be a gap.

> If you're processing a scene with other individuals, detectives helping you, you know, you might be focusing on one area and you might get called to another room if they've located something; so a gap in photos is not uncommon.

PCR T.Tr. Vol.III 157:2–:14. And even Jones's private investigator testified that he did not perceive the time gap itself as being significant, and that there could be legitimate reasons to explain the gap between photographs. *See* PCR T.Tr. Vol.IV 47:5–48:4, 51:7–:11, 54:6–:25. The 44-minute time gap is thus not an irregularity at all, and Jones has shown nothing that would have been worth addressing at his criminal trial that would not have been easily refuted by the State.

And beyond hypotheticals of what possibly could have caused a lapse in time, now-retired Lt. Ron Orht testified that he had been the ranking officer in charge of the crime scene investigation. *See* PCR T.Tr. Vol.II 134:1–:5. When questioned about the time lapse, he specifically recalled a possible reason for the delay:

> Q. There have been some questions asked an earlier witness about when photographs were taken, and it's been pointed out that some of the crime scene photographs were taken, then there was approximately a 45-minute gap in time, and then the last four photographs were taken. Do you have any recollection of what

> would have happened in that approximately 45-minute gap in time before the last photographs were taken? A. Completing our search of the apartment, and I believe that was one of the first times we used a light with a filter on it looking for blood and semen.
>
> Q. And does that take some amount of time to use? A. As I recall, it did. We were having problems with the batteries and getting it to operate correctly.
>
> Q. And do you remember who operated that device to look for the blood and semen? A. That would have been Officer Goecke.
>
> Q. And Officer Goecke is the one who was taking the photos as well? A. I believe so, yes.
>
> Q. And in your recollection, was he doing those separately? In other words, he wasn't operating the device to look for blood and semen at the same time that he was simultaneously taking a photograph? A. That's correct.

PCR T.Tr. Vol.II 146:6–:25. Goecke's report confirms he used luminol to search for blood. *See* State's Ex. WWW (Goecke Report); App. 88. Watson was also asked about whether this type of activity could cause a delay, and she confirmed it would:

> Q. But the information is the same, okay. You were mentioning Lumin[o]l and how that might impact the timeline, the use of Lumin[o]l? A. I didn't mention—I talked about Lumin[o]l—excuse me, but I didn't mention that it would change the time frame. However, it would. Lumin[o]l is something that you have to take some time as you use it for it to develop.

> Q. And how would that impact the timeline? A. Reference the photographs?
>
> Q. Yes. A. There would be a gap in photos if they utilized that Lumin[o]l and then took photos afterwards, there would be a gap in the photos.

PCR T.Tr. Vol.III 162:20–163:7. And because the forks were photographed on opposite sides of the bed, it seems logical and reasonable that Goecke may have photographed the first fork on one side of the bed, attempted to use the luminol to detect blood or semen, and then moved to the other side of the bed to photograph the second fork. *See* PCR T.Tr. Vol.II 145:2–:6.

Jones's argument is ultimately that the police planted a second fork in his apartment during the 44-minute gap in time. *See* Appellant's Br. at p.26 ("Jones further explained that he had only *one* fork in his apartment…." (emphasis in original)). But it is noteworthy that the stamped brands and words on the two forks are identical. *See* PCR T.Tr. Vol.II 58:20–59:2. If Jones's argument is understood correctly, this would mean the police would have to have found and planted not only a mere second fork in the 44-minute period, but that miraculously the police found and planted an exact matching fork from the same manufacturer, or the same dinnerware set, in the

relatively short time. This argument strains credibility. It is much more plausible that Officer Goecke, acting as the sole crime scene technician, was occupied with other tasks, responsibilities, or conversations during the 44-minute gap between photographing objects on one side of the bed before photographing objects on the other side. And further, no evidence was actually submitted that Jones only possessed a single fork in his apartment, and even the assertion in Jones's brief about there only being a single fork in the apartment was not based on evidence or testimony actually admitted. *See* Ruling Denying Relief at p.22 ("Mr. Jones never testified and never offered any other evidence to support this statement."); App. 58.

Additionally, it is unclear what Jones's ultimate attempt to prove there was only one fork would accomplish. Even if there only had been one fork used in commission of the crime, "[t]he importance of the presence of two forks versus one in the apartment is not immediately apparent." Ruling Denying Relief at p.22; App. 58. At most, it seems the absence of a second fork would have been weak impeaching evidence and nothing more. The unclear nature of

Jones's claim further undermines his assertion that he showed his trial counsel had performed deficiently.

The 44-minute gap is ultimately nothing more than a red-herring. Jones has failed to show his trial counsel breached a duty by failing to make a meritless issue out of the 44-minute gap, or to show the outcome was undermined. This Court should reject his claim.

III. The District Court did Not Abuse its Discretion by Rejecting Jones's Request to Compel a State-Employed DCI Forensic Analyst to Act as an Investigator or Expert Witness in His PCR.

Preservation of Error

Jones requested appointment of a crime scene technician at the State's expense, and the court ultimately denied his request. *See* PCR T.Tr. Vol.III 83:17–103:12. The State does not contest error preservation.

Standard of Review

The denial of an indigent defendant's or applicant's request for defense services, including an expert witness or investigator, at State's expense is reviewed for an abuse of discretion. *Linn v. State,* 929 N.W.2d 717, 729 (Iowa 2019); *State v. Leutfaimany,* 585 N.W.2d 200, 207 (Iowa 1998). There must be a demonstrated need for expert services to appoint an expert witness or investigator on

postconviction relief; random fishing expeditions are disfavored. *Linn,* 929 N.W.2d at 749; *Leutfaimany,* 585 N.W.2d at 208. "An indigent defendant bears the burden to demonstrate a reasonable need for such services." *State v. Dahl*, 874 N.W.2d 348, 352 (Iowa 2016) (citing *State v. Corker*, 412 N.W.2d 589, 593 (Iowa 1987)). "Discretion expresses the notion of latitude." *State v. McNeal*, 897 N.W.2d 697, 710 (Iowa 2017) (Cady, C.J., concurring specially).

Merits

Jones argues the district court abused its discretion by denying his request for a "crime scene tech" to act as his investigator and/or expert witness. *See* Appellant's Br. at pp.28–32. The State submits Jones has failed to demonstrate an abuse of the PCR court's discretion.

"Unless the trial court makes a finding that defense services, including expert or investigative services, are necessary in the interest of justice, an indigent defendant is not entitled to receive those services at state expense." *Dahl*, 874 N.W.2d at 352. It is the applicant's burden to show an expert or investigator is necessary, and fishing expeditions are not sufficient justification. *Id.*

It is first necessary to clarify the request that Jones actually made below. Jones was expressly requesting a State-employed DCI forensic analyst, not a mere private for-hire investigator or expert as he now implies on appeal.

First, Jones's pro se filings are clear that Jones was request the district court compel a State-employed investigator to act as the expert crime scene technician for his postconviction relief case. On January 7, 2019, Jones filed a pro se application wherein he explicitly requested a "STATE investigator that do crime scene investigation & prese[r]vation of evidence." 1/7/19 Pro Se Application for State Investigator (underlining in original); App. 15. The filing continued to explain that Jones was alleging that his counsel was providing structural error and ineffective assistance by hiring a private investigator, and reiterating that he wanted "to HIRE[] the STATE INVESTIGATOR office." 1/7/19 Pro Se Application for State Investigator (underlining in original); App. 15. Again, on January 14, 2019, Jones filed another pro se application captioned, "Application to Hire State Investigator at State Expense" wherein he complained that he had instructed his PCR counsel to "HIRE A STATE Investigator," and complaining that his counsel was providing

ineffective assistance by instead requesting a "PRIVATE" investigator. 1/14/19 Pro Se Application for State Investigator (underlining in original); App. 16. Following the fourth day of trial, Jones's counsel filed a "Statement of Justification" wherein it was still asserted that Jones was requesting a "Crime Tech *or DCI crime scene investigator*." Statement of Justification at p.3; App. 22. And Jones additionally sent a letter to the appointed private investigator complaining that he told PCR counsel "I Told him I want A STATE Investigator," and that he wanted the investigator and PCR counsel to return to the Marshalltown Police Department "with a STATE Crime Scene 'Technician'…." Applicant's Ex. 49 (Letter to Gratias) (underlining in original); App. 85–87.

Second, Jones's in-court statements even more clearly detailed that Jones absolutely did not want a private crime scene technician or investigator, instead he very explicitly wanted a DCI forensic analyst to act as an investigator and/or expert witness. At the May 7, 2018, hearing, Jones was adamant when explaining that he wanted a DCI investigator and/or expert:

> JONES: … I'm not going actually outside the ones that all—or DCI. That's what I want. I was trying to explain it to my attorney. That's who I want.

> THE COURT: You want to call a DCI expert?
>
> JONES: Yes. I have no other person, the ones that always do all the Iowa crime scenes. They're the one I want to go with.

5/7/18 Mot. H'rg Tr. 34:8–:25. And again at the November 21, 2018, hearing, Jones was again explicit in his request for a DCI investigator:

> Q. What would you like the investigator to do? A. To be a special crime tech in the Iowa Department of … To be a crime tech at Iowa Department of—Investigators.
>
> Q. The Iowa Department of what? A. The Iowa investigators. They do all the cases in the state of Iowa. I want a crime tech. …
>
> …
>
> Q. Mr. Jones, are you looking for someone who can— A. No. That's employed by Iowa, that does everybody, that goes through the crime scene in the state of Iowa.
>
> Q. Like a crime scene investigator? A. Yes. That's exactly what I want. *I don't want a private one. I want one that's employed by Iowa.*

11/21/18 Mot. Hr'g Tr. 16:1–:23. On the third day of the PCR trial, Jones again confirmed that he had been requesting the "DCI lab" for his case. PCR T.Tr. Vol.III 86:16–87:3.

Third, although Jones asserts his PCR counsel had been inarticulate earlier by requesting a private investigator (which was

granted), by day four of the trial even Jones's PCR counsel was clear that Jones was requesting a DCI crime scene investigator, not a privately retained one:

> THE COURT: Mr. Clausen, I want from you on the record this afternoon a list of all of the other witnesses that you're contemplating calling so that we can be prepared to make a decent estimate of how long this is going to take and be prepared to go. Can you give that to me?
>
> PCR COUNSEL: Yes, Your Honor. Your Honor, the list I have is as follows: ...
>
> ...
>
> PCR COUNSEL: A DNA expert, an unidentified DCI investigator.
>
> THE COURT: Is this a specific person that exists?
>
> PCR COUNSEL: An investigator from DCI to review the crime scene photos, Your Honor.
>
> THE COURT: All right.
>
> PCR COUNSEL: And specifically with regard to the—I have heard it referred to as metadata or the data on the card showing when it was taken and what type of a camera.
>
> THE COURT: You say "it." What was taken?
>
> PCR COUNSEL: The crime scene photos, Your Honor.
>
> THE COURT: Well, that's not a witness. That's—

> PCR COUNSEL: I don't have one identified yet. *It's a request for an expert, essentially, a request to be able to call somebody from DCI to do that.*
>
> THE COURT: So is that your DCI investigator or is that two different people?
>
> PCR COUNSEL: That is the DCI investigator, Your Honor.
>
> THE COURT: Okay.
>
> PCR COUNSEL: One and the same.

PCR T.Tr. Vol.IV 60:9–61:20 (emphasis added).

Jones's appellate counsel attempts to downplay the fact that Jones was actually requesting a DCI-employed forensic analyst, or technician, by recasting his request as simply for an expert on crime scene investigations and preservation of evidence. *See* Appellant's Br. at pp.28–29. But this attempt to recast Jones's request is unsupported by Jones's very clear demands that he be given a state-employed crime scene analyst, not a privately retained one. Each time Jones's PCR counsel made a statement or filing that requested a private investigator, Jones vehemently resisted his attorney's characterization and he specifically clarified to the court that his request was for a State-employed crime scene investigator or technician, not a private one.

The court did not abuse its discretion by denying Jones's request for a DCI criminal analyst to be compelled to act as Jones's investigator or expert witness. Beyond such actions being beyond the scope of the work DCI performs on behalf of the State, Jones failed to show any need for a DCI employee to be assigned to work on his behalf. *See* 11/21/18 Mot. Hr'g Tr. 21:19–22:1 ("I don't think a DCI expert witness would consent to being an investigator in this case when they're employed by the DCI…."); PCR T.Tr. Vol.IV 71:18–72:1 (noting that even permitting Jones to call DCI to make a request for them to act as his investigator or expert would be a waste of DCI's time, a waste of PCR counsel's time, and a waste of the court's time). And because Jones specifically did not want any other, private crime scene technician, there were no defense services the court was required to provide.

Additionally, because Jones actually desired a government-employed crime scene technician—primarily to explain the ordinary policies and procedures for searches and investigations—his request was appropriately denied because such testimony would have been redundant and cumulative. *See* PCR T.Tr. Vol.III 99:19–100:15 ("What I believe Mr. Jones wants the crime tech for is to show that,

first, the normal way of doing an investigation…. [H]e believes that a crime tech looking at these photos would be able to show other ways in which investigative policies and procedures were not followed and what harm could flow from them having not been followed.").During the PCR trial, Jones twice called Marshalltown Police Department's crime scene technician, Courtney Watson. Watson detailed her nine plus years of experience, her hundreds of hours in training as a crime scene technician including specifically training in photography, and the hundreds of crime scenes she had been involved with. *See* PCR T.Tr. Vol.II 34:9–:20, Vol.III 156:12–:18. Importantly, for Jones's benefit, Watson[3] had not been involved in the original investigation of the crime scene, so she was able to give a more impartial view on what the ordinary policies and procedures were for crime scenes, and to give testimony about her opinion on what the evidence showed and whether alleged discrepancies gave rise to any concerns about the integrity of the search or investigation. *See* PCR T.Tr. Vol.II 40:21–

[3] It should also be noted that now-retired Officer Ryan Goecke also testified at the PCR trial, and that he too was a crime scene technician. *See* PCR T.Tr. Vol.I 164:22–165:6. But the State notes Goecke was the original investigator who Jones asserted was involved in the purported planting and fabricating of evidence, so the State instead focuses on the availability of, and testimony from, Watson.

:25, Vol.III 157:15–:17. And because Watson was a crime scene technician at the Marshalltown Police Department, it is likely that she was among the most qualified individuals that possibly could have been called to testify because she would know more than another random crime scene technician what the policies and procedures were for a crime scene investigation conducted by the Marshalltown Police Department.

Because Jones was able to twice call Watson as a witness, he got exactly what he had really been looking for: a professional, trained crime scene technician whom he could question about the original investigation and evidence so he could unveil any alleged defects or irregularities. But if anything, the fact that Watson's trained testimony undercut Jones's claims—including her explanations that the time-gap in the photos was entirely ordinary and that the fork in evidence appeared the same as the fork in the original crime scene photograph—supports the conclusion that no further crime scene technician expert or investigator would have been warranted. *See* PCR T.Tr. Vol.III 121:4–:8, 156:22–157:1. There was no indication that any other government-employed crime scene technician would have come to different conclusions, nor that there were any legitimate

irregularities worthy of further investigation. Thus, Jones failed to show a need for the appointment of an additional crime scene technician or analyst at the State's expense. His claim should be rejected.

It should also be noted that although Jones was adamant that he did not want a private crime scene technician, the court nevertheless gave Jones a private investigator who actually did conduct a review and analysis on photos and the physical evidence for Jones. *See* PCR T.Tr. Vol.IV 6:6–10:3. Originally, Jones's PCR counsel explained that a private investigator would be able to evaluate the evidence and to reach out to DCI to see if they would be willing to help in the manner Jones desired. *See* 11/21/18 Mot. Hr'g Tr. 21:4–23:6; *see also* 11/3/18 Appl. to Hire Private Investigator; App. 9–10. The investigator's experience ended up being more limited than Jones's PCR counsel originally believed, but the investigator nevertheless was able to evaluate and explain metadata of photographs, and he reviewed the physical evidence and made the comparisons that Jones sought. *See* PCR T.Tr. Vol.IV 6:6–10:3, 15:3–17:16. The State submits that to the extent Jones showed any need for an investigator or expert, the appointment of this private investigator

was sufficient. And even though Jones now complains the investigator was not able to conduct a deeper forensic analysis of the evidence, Jones failed to provide the PCR court with a showing that any further analysis would yield any meaningful results that were not already apparent or even that there was any probability that such hypothetical deeper analysis could even be performed.

Ultimately, Jones failed to show that the intended use of an additional investigator and/or expert would have been anything more than a random fishing expedition in the hope of finding any potential irregularity Jones could seize on. Not only do district courts have the discretion to deny the appointment of experts and investigators for random fishing expeditions, but the Supreme Court has specifically discouraged courts from granting such requests: "We discourage courts from allowing the State to pay for defense services when an indigent defendant merely seeks to embark on a random fishing expedition in search of a defense." *Dahl*, 874 N.W.2d at 352. Jones's request for additional investigators or experts fell precisely in that category.

Jones failed to demonstrate a reasonable need for an additional investigator or expert witness—and specifically, a State-employed

DCI forensic analyst—specializing in crime scenes. This Court should find Jones has failed to demonstrate that the PCR court abused its discretion by denying his request.

IV. The District Court did Not Abuse its Discretion by Declining to Permit Jones to Call the Victim and Trial Prosecutor as Witnesses.

Preservation of Error

Jones requested to be able to call the victim and the trial prosecutor as witnesses at the PCR trial. *See* PCR T.Tr. Vol.IV 60:9–:16, 74:16–74:24; Statement of Justification; App. 20–26. After Jones failed to give any relevant justification for why the victim would be a necessary witness, the court denied his request. *See* PCR T.Tr. Vol.IV 62:19–64:16. The PCR court additionally rejected Jones's request to call the trial prosecutor as a witness. *See* 5/20/20 Order; App. 27–29.

Standard of Review

Jones argues the standard of review is de novo, presumably because he frames his claim as a constitutional violation because he was not permitted to present evidence in support of his actual innocence claim. *See* Appellant's Br. at p.33. The State questions whether there exists such a constitutional right to present evidence for a claim of actual innocence in PCR and also notes the court's refusal to admit some evidence did not mean Jones was prevented

from admitting other evidence to support his claim in the form of testimony and exhibits. In any event, the real question on appeal is whether the court's evidentiary rulings excluding witnesses were proper. Jones even appears to recognize this because he cites the evidentiary rules on relevance in making his argument that the witnesses should not have been excluded. *See* Appellant's Br. at p.35. And it should also be noted that even if Jones had a constitutional right to present evidence in support of his actual innocence claim, such a right would not exempt him from application of the rules of evidence. *See, e.g.*, *State v. Losee*, 354 N.W.2d 239, 242 (Iowa 1984).

Because the true question before this Court is whether the PCR court erred in making evidentiary rulings excluding certain witnesses, review is for an abuse of discretion. *See State v. Thompson*, 954 N.W.2d 402, 406 (Iowa 2021). "Evidentiary decisions will be given 'wide latitude regarding admissibility' so long as the district court did not ignore the established rules of evidence." *Id.* (citing *State v. Sallis*, 574 N.W.2d 15, 16 (Iowa 1998)). "An abuse of discretion occurs when the trial court exercises its discretion 'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Tipton*, 897 N.W.2d 653, 690 (Iowa 2017) (quoting *State v.*

Buenaventura, 660 N.W.2d 38, 50 (Iowa 2003)). When defending a court's evidentiary ruling admitting or excluding evidence, the State may argue—and this Court may rely on—any ground in support of affirmance whether or not the same grounds or alternatives were urged below. *Giza v. BNSF Ry. Co.*, 843 N.W.2d 713, 724–25 (Iowa 2014); *DeVoss v. State*, 648 N.W.2d 56, 62–63 (Iowa 2002).

Merits

Jones primarily complains the PCR court denied his request to call the victim as a witness at the PCR trial. *See* Appellant's Br. at pp.33–35. In the final paragraph of his argument "Jones also complains" about the court's denial of his request to call the prosecutor as a witness at the PCR trial, and his inability to cross-examine one of his trial attorneys, Tomas Rodriguez, in-person (instead of by telephone). Appellant's Br. at p.35. The State submits Jones has failed to demonstrate an abuse of the court's discretion by denying his requests to call the victim and trial prosecutor as witnesses. The State additionally submits that Jones's off-hand complaint about his inability to confront his trial counsel in person is insufficient to raise that issue on appeal.

"Relevant evidence is admissible…" Iowa R. Evid. 5.402. "The general test of relevancy is 'whether a reasonable [person] might believe the probability of the truth of the consequential fact to be different if [the person] knew of the proffered evidence.'" *State v. Putman*, 848 N.W.2d 1, 9 (Iowa 2014)) (quoting *State v. Plaster*, 424 N.W.2d 226, 229 (Iowa 1988)) (alterations in original). However, "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Iowa R. Evid. 5.403.

From before trial all the way through the fourth day, the PCR court requested—and gave Jones multiple opportunities to present—any showing of why the victim's and trial prosecutor's testimony would be necessary. *See* 11/21/18 Mot. Hr'g Tr. 35:12–41:4; PCR T.Tr. Vol.I 79:1–83:9 ("If we get to a situation in the trial where you can identify for me that, 'This, Judge, is where I needed [the trial prosecutor],' then you tell me, and at that point I'll consider it."); PCR T.Tr. Vol.II 183:2–:7 ("Then, [counsel], again, if you think you need—if you have a legitimate basis for calling [the victim], you're going to

have to tell me exactly what it is that you want from her. I'm not going to allow you to recall her just to ask her if she really meant it the first time or if she's changed her mind."), PCR T.Tr. Vol.IV 62:19–63:6. Jones failed to present adequate reasons for why new testimony would be necessary beyond what was already contained in the underlying record, and the court rejected Jones's requests to call them as witnesses because the court concluded the minimal relevance did not justify calling them. The court's conclusion was supported by Rule 5.403's limitations on the admission of relevant evidence because the evidence would have been needlessly cumulative, would have been a waste of time, and would have caused an undue delay in the already excessively long PCR. These considerations fall squarely within the district court's discretion "in controlling the trial process and expedition of case resolution in an overloaded judicial system." Laurie Kratky Dore, 7 Ia. Prac. Series: Evidence § 5.403:1; *see Blakely v. Bates*, 394 N.W.2d 320, 324 (Iowa 1986) (recognizing trial court's discretion to control trial process and to exclude cumulative evidence bearing solely on credibility).

Regarding the victim, the court specifically noted that because Jones was unable to show or argue that any testimony would be

different from the underlying trial transcript, calling the victim would result in needlessly presenting cumulative evidence. *See* 11/21/18 Mot. Hr'g Tr. 35:12–41:4 (noting everything Jones was wanting to get from the victim's testimony was already included in the underlying trial transcript and leaving open the possibility for Jones to call the victim if something was later developed during trial that requires new testimony from her); PCR T.Tr. Vol.II 82:12–:22 (acknowledging the impeachment Jones wanted to question victim on was already contained in trial transcript and considered by the trial judge before a verdict was rendered), 83:7–:9 ("You come up with something that isn't already in the criminal trial and I'll look at it, but until that showing is made, you are to leave her alone."), 183:2–:7, PCR T.Tr. Vol.IV 62:19–63:8. The court and Jones already had the opportunity to review and rely on the victim's testimony in the trial transcript, and it was unnecessary for the victim to testify to the exact same information again. *See* 11/12/18 Mot. Hr'g Tr. 39:11–41:4. Further, having the victim testify would have been a waste of time and would have amounted to an undue delay because there was no legitimate basis for forcing the victim to testify merely to see if she had changed her testimony. *See* PCR T.Tr. Vol.II 183:2–7 ("I'm not going to allow

you to recall her just to ask her if she really meant it the first time or if she's changed her mind.").

Beyond Jones's unsupported claims, there was no actual allegation the victim had changed her mind about her testimony, and there were no witnesses, affidavits, or other evidence presented of any recantation or inconsistent statements by the victim. *See* PCR T.Tr. Vol.II 80:19–24 ("There's been no indication in the case against Mr. Jones that [the victim] has recanted. … [T]here's no indication that [her] testimony has changed or that she has recanted in any way."). Even by the fourth day of the five-day trial, Jones's PCR counsel conceded they still had no evidence to support the assertion the victim's testimony might be different this time:

> THE COURT: … I have inquired on the record and I inquired back when we were at my desk earlier if you have any indication that she has recanted or changed her story in any material way. The answer was no; is that right; [counsel]?
>
> COUNSEL: I have no independent indication that she's recanted in any way. … I'm unaware of anybody else that would be able to give me that information.
>
> THE COURT: All right.

COUNSEL: Directly or indirectly.

PCR T.Tr. Vol.IV 62:19–63:8. The court noted that beyond being a mere fishing expedition, calling the victim as a witness would have had no legitimate purpose but instead seemed like it was Jones's attempt to harass and revictimize her. *See* PCR T.Tr. Vol.IV 63:12–64:16. Because the court gave Jones multiple opportunities to present any necessary, noncumulative basis to call the victim as a witness, and Jones was unable to do so, the court did not abuse its discretion by excluding her as a witness.

Jones also complains he was not able to call the trial prosecutor as a witness. Well before the PCR trial even began, Jones's counsel noted they were having difficulty locating the trial prosecutor because she had moved to the Pacific Northwest. *See* 5/7/18 Mot. Hr'g Tr. 26:1–:17; 11/21/18 Mot. Hr'g Tr. 41:14–42:12; PCR T.Tr. Vol.I 20:12–23:4. Counsel also noted that even if they located the prosecutor, they were unsure if they would be able to obtain her willingness to cooperate or if they could compel her to return to Iowa to give testimony. *See* PCR T.Tr. Vol.I 21:23–23:4. The PCR court inquired as to what information Jones was attempting to elicit from the trial prosecutor that would not have already been in the underlying trial

record. Jones asserted that he desired to ask the trial prosecutor if she coerced the victim into lying (despite failing to present any evidence to support this accusation), whether she knew the whereabouts of an apparently missing DVD (that had not been used at the underlying trial and of which there were police reports describing its contents) merely documenting Jones declining to answer questions from the police, and questions about a purported claim of malicious prosecution. *See* T.Tr. Vol.I 23:5–32:5, 35:8–37:3. The State countered that the underlying records were already adequate for Jones to pursue his claims and that questioning the trial prosecutor would have been redundant and unnecessary. *See* T.Tr. Vol.I 35:8–37:3. The court noted that "everything" being discussed were issues "raised during the course of the trial or its pretrial processes and adjudicated." PCR T.Tr. Vol.I 46:6–:8; *see* PCR T.Tr. Vol.II 125:17–:20 ("I think what I said yesterday about [the trial prosecutor] was that you point out to me where in the trial she's missing and you need her, and I'll look at that. … I think that's what I intended."). "I haven't heard anything that makes me think [the trial prosecutor is] necessary yet." PCR T.Tr. Vol.II 183:8–:9. The court also noted its

concerns with extending the trial even further. *See* PCR T.Tr. Vol.II 188:2–:6.

By the fourth day of trial (approximately nine months after the first two days of trial), PCR counsel still had been unable to locate or communicate with the trial prosecutor. PCR T.Tr. Vol.IV 74:16–:24. Counsel noted there were limited options in compelling her attendance, and that he still was having "trouble finding her." PCR T.Tr. Vol.IV 74:16–:24. The court noted that by that point it was unlikely that counsel was going to be successful in locating and obtaining the trial prosecutor's testimony: "I don't think you're going to get it done." PCR T.Tr. Vol.IV 83:14–84:2.

Several months following the fourth day of trial, on May 20, 2020, the court filed an order concluding the prosecutor's testimony would be irrelevant and ordering that she would be excluded as a witness. The court, relying on a then recently decided Iowa Supreme Court opinion, found the testimony would be irrelevant because the trial prosecutor's mental impressions were off-limits and that a defendant has no right to compel the testimony of their prosecutor. *See* 5/20/20 Order (quoting *State v. Leedom*, 938 N.W.2d 177, 195 (Iowa 2020)); App. 27–29.

The State submits the court's order excluding testimony from the trial prosecutor was not an abuse of discretion for the same reasons it was permissible to exclude the victim's testimony. Just as with the issue of the victim's testimony, the underlying trial court record was adequate for purposes of making his arguments, and the trial prosecutor's testimony would have been nothing more than a needless presentation of cumulative evidence and a waste of time. *See* PCR T.Tr. Vol.I 46:6–:8. Additionally, throughout the PCR trial it was clear that the trial prosecutor had not been located, and there was no indication that she was going to be located, or compelled to return to Iowa to testify, in a timely manner. Compounding this fact with the unnecessary, duplicative nature of the testimony, the court's exclusion was appropriate to avoid further undue delay. Years of effort, and the services of a private investigator, were apparently expended trying to locate the trial prosecutor. *See* 5/7/18 Mot. Hr'g Tr. 26:5–:10 (noting the State no longer had contact with the trial prosecutor who had moved out of state); 11/21/18 Mot. Hr'g Tr. 8:12–:21 (noting PCR counsel cannot locate trial prosecutor and needs the aid of a private investigator), 41:14–:21 (noting the State does not know the current whereabouts of the trial prosecutor); PCR T.Tr.

Vol.I 21:21–23:4 (noting efforts of private investigator to locate trial prosecutor and noting PCR counsel does not "seem to possess the skill set to get her here" and that he was "still not convinced that under our rules we could compel her to attend"); PCR T.Tr. Vol.IV 74:16–:24 ("I know that creates some logistical issues because in a civil case, the ability to compel an out-of-state witness is somewhat between limited and nonexistent. And I've also had trouble finding her."). The court was not obligated to permit an endless delay to the already exceedingly long PCR in the hopes that someday Jones would locate the trial prosecutor to obtain testimony that ultimately would not affect the proceedings. The result would have been both a waste of the court's time and an undue delay.

Additionally, even if the court should not have excluded the trial prosecutor, reversal is not warranted because the record does not establish that Jones was prejudiced. Nothing in the record shows Jones ever was able to locate or speak with the trial prosecutor, and there is no reason to believe excluding her had any affect. *See Mercer v. Pittway Corp.*, 616 N.W.2d 602, 612 (Iowa 2000) (recognizing reversal is only appropriate where substantial rights of a party were affected). Beyond Jones's unsupported belief that the trial prosecutor

would confess to having coerced the victim into testifying, there is no indication that the trial prosecutor's testimony would have been any different from what was already contained in the trial record, or how it would possible have changed the outcome. The DVD issue Jones complained about was found to be entirely meritless because it had no possible impact on the criminal trial. *See* Ruling Denying Relief at pp.32–33; App. 68–69. The PCR court specifically noted no evidence was presented whatsoever to show the victim was coerced into lying by the trial prosecutor. *See* Ruling Denying Relief at pp.34–35; App. 70–71. And any other assertion of prosecutorial misconduct was rejected as unexplained, previously litigated, or wholly without merit. *See* Ruling Denying Relief at pp.34–37; App. 70–73. There was no prejudice stemming from the exclusion of the trial prosecutor.

The State also notes that in addition to failing to show prejudice by the exclusion of the trial prosecutor, Jones has also failed to show he was prejudiced by exclusion of the victim because there is no evidence, direct or even implied, that her testimony would have been anything different from her credible trial testimony. *See* Ruling Denying Relief at p.34–35; App. 70–71. He is not entitled to a reversal even if the victim's testimony should not have been excluded.

Finally, the State notes that Jones states that he "also complains that he was unable to cross examine his trial counsel, Tomas Rodriguez, in person...."[4] Appellant's Br. at p.35. The State submits this mere passing reference is inadequate to raise an issue on appeal. "[P]assing reference to an issue, unsupported by authority or argument, is insufficient to raise the issue on appeal." *State v. Louwrens*, 792 N.W.2d 649, 650 n.1 (Iowa 2010); *see Baker v. City of Iowa City*, 750 N.W.2d 93, 102-03 (Iowa 2008) (recognizing a conclusory statement without argument leaves an issue waived). It simply is not the duty of this Court to "speculate on the arguments [the appellant] might have made and then search for legal authority and comb the record for facts to support such arguments." *State v. Olds*, No. 14-0825, 2015 WL 6510298, at *8 (Iowa Ct. App. Oct. 28, 2015) (quoting *Hyler v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996)). "Judges are not like pigs, hunting for [meritorious] truffles buried in [the record]." *Venckus v. City of Iowa City*, 930 N.W.2d 792, 806

[4] Rodriguez testified at the PCR trial by phone. *See* PCR T.Tr. Vol.I 104:8–108:18. Jones desired to have him recalled for in person testimony. The PCR court concluded Jones has no confrontation clause right in PCR, and that "No legitimate purpose would be accomplished by extending the trial any longer or by inconveniencing Mr. Rodriguez any further." *See* Ruling Denying Relief at p.30; App. 66. To the extent Jones's claim is considered, it is without merit.

(Iowa 2019) (alterations in original) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)); *see* Iowa R. App. P. 6.903(2)(g)(3) (requiring citations to authority and the parts of the record or an issue may be considered waived). This Court should decline to consider Jones's vague complaint.

CONCLUSION

This Court should affirm the denial of Arzel Jones's application for postconviction relief.

REQUEST FOR NONORAL SUBMISSION

Oral submission is unnecessary.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **9,920** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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