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WRITING SAMPLE

This writing sample is my memorandum of law supporting a petition for a writ of habeas corpus under 28 U.S.C. § 2254, filed in the United States District Court for the Northern District of New York. I drafted it for a client of the Jeffrey Deskovic Foundation for Justice, where I prepare state post-conviction and federal habeas filings for people asserting factual innocence. My supervising attorney edited the memorandum before filing and authorized this submission. What appears here is my own work, informed by that feedback: the Preliminary Statement, the Statement of Facts, the Standards of Review, and both arguments.

One adaptation bears noting. For this sample, the memorandum presents the newly-discovered-evidence showing—the Levitan and Gary affidavits—as a *Schlup v. Delo* gateway to the constitutional claims appellate counsel did not raise on direct appeal. In the matter as filed, that gateway had already been established, and the petition proceeded directly to the merits. I adjusted the procedural posture only to keep the sample self-contained; the substantive analysis is otherwise as filed.

I updated the memorandum in July 2026, tightening the prose and revising the citations; those revisions are mine alone.

PRELIMINARY STATEMENT

Mr. Cameron Isaac is serving a sentence of life without parole for a conviction built solely on circumstantial evidence. No eyewitness or informant testified, or even gave a statement, that Mr. Isaac shot and killed the victim, Xiaopeng Yuan, to rob him of two pounds of marijuana.

No physical evidence tied him to the murder: no DNA, no fingerprints, no weapon, no shell casings, and none of the marijuana the robbery supposedly targeted. But for two failures by trial counsel—the failure to investigate the cell-tower data the prosecution's non-expert presented to the jury, and the failure to interview a key witness—the result would have been different. Appellate counsel compounded those failures, never raising trial counsel's deficient performance.

Mr. Isaac submits this memorandum of law in support of his first petition to this Court for a writ of habeas corpus under 28 U.S.C. § 2254.

STATEMENT OF FACTS

A. The Allegations

A six-count indictment in Onondaga County Supreme Court charged Mr. Isaac with first-degree murder, two counts of second-degree murder, two counts of first-degree robbery, and second-degree weapon possession. He had no prior record. The same indictment charged Ninimbe Mitchell with felony murder, robbery, and weapon possession.

B. The Trial

The prosecution theorized that on September 30, 2016, Mr. Mitchell knowingly drove his uncle, Mr. Isaac, to and from a planned robbery of Mr. Yuan, and that Mr. Isaac robbed and fatally shot Mr. Yuan on the street in the Springfield Gardens apartment complex in the Town of DeWitt (T. 381–90, 454, 1069). Mr. Yuan, a Syracuse University student who sold marijuana, was shot twice, once fatally in the heart (T. 443–44, 890–97). Police found two pounds of marijuana in his Camaro near where his body lay (T. 452, 545–54). Text messages showed that Mr. Yuan and Mr. Isaac had arranged a marijuana sale for the day of the shooting (T. 791–97, 805–16, 940–41).

Mr. Isaac's defense was that someone else shot Mr. Yuan and that he had come to buy marijuana, not to rob (T. 1208–36). Mr. Mitchell's defense was that he had driven Mr. Isaac to and from the meeting like a rideshare driver, unaware of any intent to rob (T. 410–16, 1172–1200).

The prosecution offered no eyewitness, confession, or physical evidence linking Mr. Isaac to the shooting (T. 559). Its case rested on circumstantial proof: Detective Dobrowlski's cell-tower testimony placing Mr. Isaac near the scene (T. 621–44); surveillance video of Mr. Mitchell's vehicle, though none showed Mr. Isaac (T. 822–25, 965); ammunition recovered from Mr. Isaac's home six weeks later (T. 669–80); and Detective Collins's testimony that Joy Gary—Mr. Isaac's girlfriend—gave police two statements (T. 772), though the prosecution never called her. In a recorded jail call, Mr. Isaac told Ms. Gary, "I didn't do shit" (People's Exs. 72, 72A).

C. Verdict and Sentence

The jury convicted Mr. Isaac of first-degree murder, second-degree murder, first-degree robbery, and criminal possession of a weapon (T. 1336–39). On September 25, 2017, the court sentenced him to life without parole.

D. The Direct Appeal

On appeal, counsel raised four issues: (1) the verdict was against the weight of the evidence; (2) the trial court wrongly sustained the prosecution's objection to a defense juror challenge; (3) the prosecution laid no proper foundation for the detective's reading of the text messages; and (4) the court erred in denying severance. Counsel did not raise trial counsel's failure to investigate, and did not challenge the sufficiency of the evidence. The Appellate Division, Fourth Department, affirmed on June 11, 2021, describing the proof as "overwhelming circumstantial evidence." *People v. Isaac*, 195 A.D.3d 1410, 1410 (4th Dep't 2021).

E. Post-Conviction Applications

In April 2022, Mr. Isaac filed a pro se motion to vacate the conviction under CPL § 440.10, arguing that trial counsel was ineffective for failing to investigate. The County Court denied the motion without a hearing, and the Appellate Division denied leave. A pro se writ of error coram nobis followed in April 2023, arguing that appellate counsel failed to challenge the sufficiency of the evidence; the Appellate Division denied relief. *People v. Isaac*, 217 A.D.3d 1597 (4th Dep't 2023).

In December 2023, through current counsel, Mr. Isaac filed a section 440.10 motion supported by two affidavits. Cell-tower expert Ben Levitan concluded that

Detective Dobrowlski lacked "a basic understanding of cell phone technology, radio science, [and] the fundamental operation of the cell phone network" (Levitan Aff. ¶ 2), used the wrong records, and overstated precision twelvefold—claiming two football fields when the technology permits only twenty-three (Levitan Aff. ¶ 4; T. 623, 625). Ms. Gary's affidavit described an eleven-hour interrogation in which police refused her request for a lawyer (Gary Aff. ¶ 2). The county court denied the motion without a hearing in October 2024, and the Appellate Division denied leave on March 5, 2025.

In March 2025, counsel filed a second coram nobis, arguing that appellate counsel was ineffective for failing to raise trial counsel's deficiencies and the insufficiency of the evidence. The Appellate Division denied the application, and the Court of Appeals denied leave on December 15, 2025. *People v. Isaac*, 44 N.Y.3d 1052 (2025).

STANDARDS OF REVIEW

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a state court's adjudication of a federal claim on the merits receives deference, and relief lies only where the decision was "contrary to, or involved an unreasonable application of, clearly established Federal law," or rested on "an unreasonable determination of the facts." 28 U.S.C. § 2254(d). That deference does not reach every claim. It applies only to claims the state court adjudicated "on the merits." *Sellan v. Kuhlman*, 261 F.3d 303, 312–13 (2d Cir. 2001). When the state court resolves a claim on procedural grounds without reaching its merits, federal review is de novo. *Cone v. Bell*, 556 U.S. 449, 472 (2009).

ARGUMENT

POINT I

Because the Marijuana Never Left the Victim's Car, the New Evidence Clears the *Schlup* Gateway and Shows the Evidence Was Legally Insufficient.

Mr. Isaac did not rob or kill Mr. Yuan. On the trial record, no rational juror could find the essential elements of murder or robbery beyond a reasonable doubt. And the affidavits the jury never heard make it more likely than not that no reasonable juror would convict—clearing the *Schlup* gateway to the insufficiency and trial-counsel claims appellate counsel failed to raise.

A. No Direct Evidence Links Mr. Isaac to Mr. Yuan's Death

First-degree murder under N.Y. Penal Law § 125.27(1)(a)(vii) (McKinney 2025) requires proof that Mr. Isaac intentionally caused Mr. Yuan's death during a robbery. The prosecution had no evidence tying Mr. Isaac to the crime. No eyewitness saw Mr. Isaac shoot Mr. Yuan (T. 559). No video captured him at the scene or with Mr. Yuan that day (T. 965). No informant placed him there. No confession exists (T. 559). No fingerprints tied him to Mr. Yuan's vehicle or body. No DNA linked him to the shooting (T. 559). The murder weapon was never recovered. No shell casings turned up (T. 559). Most telling, the marijuana Mr. Yuan came to sell—the object of the supposed robbery—remained in his Camaro, two pounds undisturbed and still bearing supplier Mr. Hindy's markings (T. 545–54, 561–75). If

Mr. Isaac robbed Mr. Yuan for marijuana, he left empty-handed. A robber who kills his victim does not abandon the loot. True, the murder charge does not require a completed robbery; an attempt to take Mr. Yuan's property by force would satisfy the predicate. N.Y. Penal Law §§ 110.00, 125.27(1)(a)(vii) (McKinney 2025). But the People proved neither: the marijuana sat undisturbed, none of Mr. Yuan's effects were taken, and nothing showed that Mr. Isaac demanded the drugs or used force to seize them.

Nor did police recover any of Mr. Yuan's personal effects from Mr. Isaac—no wallet, no phone, no jewelry. The absence of stolen property defeats the robbery theory. And without a robbery, first-degree murder has no predicate felony under New York law. A rational juror could not have found the elements of first-degree murder beyond a reasonable doubt on this record.

B. The Circumstantial Evidence Fails to Prove Murder or Robbery

The prosecution's case rested on four categories of circumstantial evidence: text messages, cell-tower data, surveillance video, and ammunition. None of it, alone or together, establishes that Mr. Isaac committed this crime.

The text messages between Mr. Isaac and Mr. Yuan show they arranged a marijuana purchase (T. 791–97, 805–16, 940–41). Buying marijuana is not robbery. The prosecution argued that a text from a month earlier—"drawing up a play be ready"—proved Mr. Isaac planned a heist (T. 797, 801). But Detective Collins conceded on cross-examination that Urban Dictionary defines "make a play" as a drug sale, not a robbery, and she could identify no authoritative source for her contrary reading (T. 802). The texts prove communication, not crime.

The cell-tower data fares no better. Detective Dobrowlski—who had two days of training (T. 622)—placed Mr. Isaac's phone only within "two football fields" of the murder scene (T. 623, 625). Two football fields is an area, not a person. Proximity to a cell site is not presence at a shooting; the records place Mr. Isaac in the same broad area as everyone else in the neighborhood, and no more.

The surveillance video shows even less. Cameras captured co-defendant Mr. Mitchell's BMW near the shooting and a Cricket store (T. 822–25), but no footage shows Mr. Isaac exiting the vehicle or standing with Mr. Yuan (T. 965). The video places Mr. Mitchell's car in the area, nothing more.

The ammunition proves no more. Police found six Prvi Partizan .38 hollow-point bullets in Mr. Isaac's home six weeks after the shooting (T. 669–80). Firearms examiner Mr. Kurmiskey could not say they matched the fatal round (T. 1051), could not identify the brand of the fatal projectile (T. 1037, 1055), and conceded that Prvi Partizan ammunition "is still manufactured and sold in stores and online" (T. 1053–54). Consistency is not identity.

C. The Prosecution Never Ruled Out Mr. Veras, Who Admitted He Intended to Rob Mr. Yuan

Affirmative evidence points away from Mr. Isaac. A witness near the shooting saw four Black men fleeing moments before the sirens (T. 1108–09), and a police broadcast sought three Black males, one in a black hooded sweatshirt (T. 455). The jury never learned who these men were.

Mr. Veras had motive and stated intent. Mr. Yuan had been Mr. Veras's customer until he "dumped" him for Mr. Hindy (T. 863). In a recorded police interview, Mr. Veras admitted he intended to rob Mr. Yuan (T. 874–79, 902–09). The trial court excluded that evidence, and by trial Mr. Veras had graduated and could not be located (T. 874–79). A man who admitted he intended to rob the victim walked away free. Mr. Isaac serves life without parole.

Mr. Yuan's own conduct exposed him to broader dangers. He sold bulk marijuana in a high-crime neighborhood where he did not live (T. 381–90, 454, 1069), his distinctive Camaro had been seen there for weeks (T. 1074–79), and an undercover officer was shot in the same vicinity months later (T. 956). The prosecution never proved those risks converged on Mr. Isaac rather than Mr. Veras, the fleeing men, or anyone else Mr. Yuan's trade attracted.

D. No Rational Juror Could Find the Essential Elements Proved Beyond a Reasonable Doubt

Due process forbids a conviction unless, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find each element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). New York's legal-sufficiency standard asks the same question. *People v. Danielson*, 9 N.Y.3d 342, 349 (2007) (holding that evidence is legally sufficient where a valid line of reasoning lets a rational jury find each element beyond a reasonable doubt). Under either, the prosecution failed to prove three essential elements: that Mr. Isaac caused Mr. Yuan's death, that he intended to kill, and that a robbery occurred.

The prosecution offered no reliable evidence that Mr. Isaac caused Mr. Yuan's death—no eyewitness, video, DNA, or confession, and cell-tower testimony that placed his phone only in the general area. It proved no intent to kill, because its theory depended on a robbery that never happened. And it proved no robbery: a completed robbery requires a forcible taking, N.Y. Penal Law § 160.00 (McKinney 2025), and nothing was taken—the marijuana stayed in the car—while no evidence showed an attempted taking either. Either way, no predicate felony for first-degree murder survives. To be sure, the jury convicted. Yet juries can err—especially when fed unreliable cell-tower testimony and left to speculate about coerced witness statements. A conviction cannot stand when new evidence exposes that the prosecution built its case on one inference after another.

E. The Levitan and Gary Affidavits Are Newly Discovered Evidence That Would Have Changed the Outcome

The Levitan and Gary affidavits open the *Schlup* gateway to the claims appellate counsel defaulted, because in their light it is more likely than not that no reasonable juror would have convicted. *Schlup v. Delo*, 513 U.S. 298, 327 (1995) (establishing the actual-innocence gateway); *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013) (recognizing the gateway as an exception to AEDPA's limitations). The Second Circuit treats evidence as "new" when the jury did not hear it. *Rivas v. Fischer*, 687 F.3d 514, 543 (2d Cir. 2012). Federal and state courts apply parallel tests for newly discovered evidence, asking whether the evidence was newly discovered, undiscoverable earlier through diligence, material, not merely cumulative or impeaching, and likely to produce an acquittal at retrial. *United*

States v. Forbes, 790 F.3d 403, 406–07 (2d Cir. 2015). New York states the same outcome requirement as its threshold: the evidence must be "such as will probably change the result if a new trial is granted." *People v. Salemi*, 309 N.Y. 208, 215–16 (1955). The affidavits satisfy both.

Mr. Levitan's affidavit would have let counsel object to Detective Dobrowlski's unqualified testimony, cross-examine his use of NELOS rather than Call Detail Records, and present a defense expert; instead the prosecution's non-expert went unchallenged. Ms. Gary's account of an eleven-hour interrogation and a refused request for counsel would have supplied affirmative evidence of coercion and let the defense rebut Detective Collins's "two statements" inference that she had incriminated Mr. Isaac.

The affidavits are new and not cumulative. They are dated 2023, and the prosecution—having held Ms. Gary on a material-witness order—cannot fault the defense for not securing her account sooner. *Cf. Berger v. United States*, 295 U.S. 78, 88 (1935) (observing that the government's "interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done"). Neither affidavit merely impeaches: Mr. Levitan's shows the technology cannot place a phone within the precision Detective Dobrowlski claimed and that his two-day training did not qualify him to read the records (T. 622; Levitan Aff. ¶¶ 2, 4–5)—yet the court held no *Frye* hearing—while Ms. Gary's introduces police misconduct the case had not seen. *People v. DeLeon*, 190 A.D.3d 764, 766 (2d Dep't 2021) (vacating a conviction on newly discovered evidence of detective misconduct).

Ms. Gary's affidavit is sworn and corroborated—unlike the unsworn, uncorroborated recantation letter the Second Circuit found insufficient even to make a prima facie showing, *Haouari v. United States*, 510 F.3d 350, 353–54 (2d Cir. 2007)—and a late affidavit's reliability under *Schlup* turns on its content and corroboration, not the calendar, *see Lopez v. Miller*, 915 F. Supp. 2d 373, 400 (E.D.N.Y. 2013) (crediting a recantation as reliable new evidence under *Schlup*). Her account is corroborated by Mr. Isaac's recorded words to her—"I didn't do shit." The prosecution chose to keep her silent and harvest the inference; the burden was its own to produce her or forgo it.

On a record this thin—no eyewitness, confession, video, recovered property, or informant—the affidavits would probably have changed the verdict. When "the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt." *People v. Rutter*, 202 A.D.2d 123, 133 (1st Dep't 1994) (quoting *United States v. Agurs*, 427 U.S. 97, 112–13 (1976)). Federal courts have opened the gateway on records far weaker than this one. *See, e.g.*, *Finch v. McKoy*, 914 F.3d 292, 299–301 (4th Cir. 2019) (opening the gateway where new evidence exposed a suggestive eyewitness identification); *Floyd v. Vannoy*, 894 F.3d 143, 155–56 (5th Cir. 2018) (opening the gateway to reach a suppressed *Brady* claim). If those showings cleared the gateway, Mr. Isaac's clears it comfortably: his jury heard no eyewitness, no confession, and no physical proof, and the new evidence discredits the cell-tower testimony at the heart of the State's case. For these reasons, the new evidence carries Mr. Isaac through the *Schlup* gateway, and the legally insufficient evidence cannot sustain his conviction. He asks the Court to issue the writ.

POINT II

Trial Counsel Failed to Investigate the Cell-Tower Evidence and Interview Joy Gary, and Appellate Counsel Failed to Raise Those Deficiencies.

The Sixth Amendment guarantees not just counsel, but effective counsel. *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). To prevail, a petitioner must show that counsel's performance "fell below an objective standard of reasonableness" and that, but for the errors, "there is a reasonable probability that . . . the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). A reasonable probability is one "sufficient to undermine confidence in the outcome." *Id.* at 694. Courts weigh the cumulative effect of counsel's errors. *Lindstadt v. Keane*, 239 F.3d 191, 202 (2d Cir. 2001).

Tactical choices made after a full investigation are "virtually unchallengeable," but choices made after an incomplete investigation are reasonable only so far as reasonable judgment supports the limits on investigation. *Strickland*, 466 U.S. at 690–91. A court asks whether what counsel knew would lead a reasonable attorney to investigate further. *Wiggins v. Smith*, 539 U.S. 510, 527 (2003). When counsel fails to make that inquiry, a decision not to call an expert "cannot have been based on strategic considerations." *Burch v. Millas*, 663 F. Supp. 2d 151, 176 (W.D.N.Y. 2009).

A. Trial Counsel Failed to Investigate the Cell-Tower Evidence

Trial counsel's failures were not strategy. They were a failure to investigate. Counsel knew the prosecution would offer cell-tower testimony through a detective with two days of training (T. 622) yet never consulted an expert. That omission cascaded: no objection to Detective Dobrowlski testifying without qualification, no *Frye* hearing, no challenge to his reliance on NELOS records, no exposure of his twelvefold overstatement of precision, and no defense expert. The jury heard junk science as settled fact. Had counsel consulted an expert, the jurors would have learned what Mr. Levitan later set out: the analysis was "unscientific and grossly flawed," rested on the wrong records—NELOS rather than Call Detail Records—and overstated precision twelvefold, because the technology locates a phone only within twenty-three football fields, not two (Levitan Aff. ¶¶ 2–5).

Testimony about how cell sites operate—their range and why a phone connects to one—requires a qualified expert. *People v. Ortiz*, 168 A.D.3d 482, 483 (1st Dep't 2019). Counsel's errors "were clearly the result of a lack of preparation, since no possible tactical reason can be offered to justify them." *People v. Winston*, 134 A.D.2d 546, 547 (2d Dep't 1987). A federal court considering the same omission held that counsel's failure to investigate or retain an expert to evaluate the prosecution's cell-tower evidence fell below an objective standard of reasonableness. *Roberts v. Howton*, 13 F. Supp. 3d 1077, 1103 (D. Or. 2014) (granting habeas relief in the guilty-plea context).

B. Trial Counsel Failed to Interview Joy Gary

Counsel also never interviewed Ms. Gary. The prosecution held her under a material-witness order and, through Detective Collins, implied she had given two statements incriminating Mr. Isaac—an inference damaging enough that counsel addressed it in both opening and closing (T. 1232–33). Yet counsel never spoke with her. Had he done so, he would have learned that police coerced her during an eleven-hour interrogation and that Mr. Isaac had maintained his innocence to her throughout (Gary Aff. ¶ 2).

That left two tools unused. A party's failure to call a witness within its control who would naturally be expected to testify in its favor can support a missing-witness inference. *People v. Gonzalez*, 68 N.Y.2d 424, 427 (1986). Knowing what Ms. Gary would say, competent counsel could have called her to rebut the innuendo or asked the jury to draw that inference against the prosecution that kept her off the stand. When a defendant's sworn submissions show counsel never investigated a witness with exculpatory information, the resulting factual dispute entitles him to a hearing. *People v. Howard*, 175 A.D.3d 1023, 1024–25 (4th Dep't 2019). The state court then compounded the error by denying the section 440.10 motion without one; the Second Circuit expects a district court, absent unusual circumstances, to give the assertedly ineffective attorney a chance to be heard—by affidavit if not testimony—before rejecting the claim. *Sparman v. Edwards*, 154 F.3d 51, 52 (2d Cir. 1998) (per curiam).

C. Appellate Counsel Failed to Raise the Stronger Claims

Due process guarantees effective counsel on a first appeal as of right, *Evitts v. Lucey*, 469 U.S. 387, 396–97 (1985), and *Strickland* governs the claim. *Smith v. Robbins*, 528 U.S. 259, 285 (2000). Counsel need not raise every nonfrivolous claim, *Jones v. Barnes*, 463 U.S. 745, 751–52 (1983), but falls below professional norms by ignoring claims "clearly stronger" than those raised. *Robbins*, 528 U.S. at 288.

Appellate counsel missed two such claims. Counsel never argued legal insufficiency—a challenge requiring no deference to the jury, unlike the weight challenge counsel did raise (Point I). And counsel never raised trial counsel's failure to interview Ms. Gary or to challenge Detective Dobrowlski's qualifications. The record supplied both claims: counsel knew the detective had two days of training (T. 622), testified without a qualifications hearing, and placed Mr. Isaac's phone "within two football fields" of the scene (T. 642–43); and counsel knew Ms. Gary was held on a material-witness order while the prosecution told the jury she gave "two statements" (T. 1087).

Ineffectiveness claims often belong on collateral review for want of a record, *Massaro v. United States*, 538 U.S. 500, 504–05 (2003) (holding ineffective-assistance claims may be raised on collateral review even if not raised on direct appeal), but *Massaro* preserved direct-appeal review where the trial record suffices. *Id.* at 508. The Second Circuit applies that rule to New York's procedure and has concluded that appellate counsel "unjustifiably failed" to raise a record-based ineffectiveness claim despite a sufficient record. *Sweet v. Bennett*, 353 F.3d 135, 140–41 (2d Cir. 2003) (holding a record-based ineffective-assistance claim waived under N.Y. Crim. Proc. Law § 440.10(2)(c) where appellate counsel failed to raise it on direct appeal); *Aparicio v. Artuz*, 269 F.3d 78, 91 (2d Cir. 2001) (applying the same bar to a record-based claim omitted on direct appeal); *People v. Brown*, 45 N.Y.2d 852, 853–54 (1978) (reversing on direct appeal where the record itself demonstrated ineffective assistance). The record here supplied that basis, and counsel's decision not to raise the claim squandered it.

CONCLUSION

For these reasons, Mr. Isaac asks the Court to grant the writ and vacate his conviction and sentence or, in the alternative, to hold an evidentiary hearing to expand the record. *Sparman*, 154 F.3d at 52; 28 U.S.C. § 2254(e)(2).