ZARELLA, J., dissenting. The majority concludes that the petitioner, Norman Gaines, established by a preponderance of the evidence that his trial attorney, Alexander Schwartz, rendered ineffective assistance of counsel by failing to contact a potential witness, Madeline Rivera, whose name the petitioner had given him before the trial and who could have provided alibi testimony regarding the petitioner's whereabouts at the time of the murders. Although Rivera's alibi testimony was not disclosed to anyone until approximately eight years after the trial, the majority specifically concludes that Schwartz rendered ineffective assistance because, given the seriousness of the charges against the petitioner, the petitioner's statement that he was not at the scene of the crime, the limited number of individuals that the petitioner mentioned as Bridgeport acquaintances, Rivera's proximity to the petitioner as a next door neighbor, and Rivera's relationship to a key prosecution witness, Schwartz should have recognized that Rivera might possess information that would be helpful to the petitioner's case. I disagree because, even if the evidence is viewed in the light most favorable to sustaining the petitioner's claim, the record is insufficient to support the conclusion that Schwartz should have recognized that Rivera possessed information potentially helpful to the petitioner. The record discloses only that the petitioner gave Rivera's name to Schwartz and that Schwartz was aware that Rivera was the sister of a key prosecution witness. Neither the petitioner nor Schwartz learned that Rivera could provide the alibi evidence until many years after the trial. Furthermore, there is no evidence in the record that Rivera had any connection to the crimes with which the petitioner was charged. Accordingly, in my view, there was no basis for the habeas court's conclusion that Schwartz rendered ineffective assistance of counsel by failing to investigate Rivera.

I begin by noting that the governing legal principles disfavor a finding of ineffective assistance of counsel. "Judicial scrutiny of counsel's performance must be highly deferential." *Strickland* v. *Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonably professional judgment." Id., 690. Thus, "counsel need not track down each and every lead or personally investigate every evidentiary possibility before choosing a defense and developing it." (Internal quotation marks omitted.) *Williams* v. *Commissioner of Correction*, 100 Conn. App. 94, 103, 917 A.2d 555, cert. denied, 282 Conn. 914, 924 A.2d 140 (2007). "The failure of defense counsel to call a potential defense witness does not constitute ineffective assistance

unless there is some showing that the testimony would have been helpful in establishing the asserted defense. Defense counsel will be deemed ineffective only when it is shown that a defendant has informed his attorney of the existence of the witness and that the attorney, without a reasonable investigation and without adequate explanation, failed to call the witness at trial. The reasonableness of an investigation must be evaluated not through hindsight but *from the perspective of the attorney when he was conducting it*." (Emphasis added.) *State* v. *Talton*, 197 Conn. 280, 297–98, 497 A.2d 35 (1985).

I agree with the majority that our case law has recognized "several scenarios in which courts will not second-guess defense counsel's decision not to investigate or call certain witnesses or to investigate potential defenses, such as when: (1) counsel learns of the substance of the witness' testimony and determines that calling that witness is unnecessary or potentially harmful to the case; (2) the defendant provides some information but omits any reference to a specific individual who is later determined to have exculpatory evidence such that counsel could not reasonably have been expected to have discovered that witness without having received further information from his client; and (3) the petitioner fails to present, at the habeas hearing, evidence or the testimony of witnesses that he argues counsel reasonably should have discovered during the pretrial investigation." Our case law also has recognized that there are occasions when defense counsel's decision not to investigate or call certain witnesses after learning of the substance of the witness' testimony constitutes ineffective assistance of counsel. See, e.g., *Bryant* v. *Commissioner of Correction*, 290 Conn. 502, 509, 517–18, 964 A.2d 1186 (petitioner's trial counsel rendered ineffective assistance when he failed to present four independent witnesses whose testimony would have supported third party culpability defense and substantially impeached evidence presented against petitioner because counsel had read statements by all four witnesses before trial and third party culpability defense was supported by sufficient evidence), cert. denied sub nom. *Bryant* v. *Murphy*, U.S. , 130 S. Ct. 259, 175 L. Ed. 2d 242 (2009); *Vasquez* v. *Commissioner of Correction*, 107 Conn. App. 181, 185, 944 A.2d 429 (2008) (petitioner's trial counsel rendered ineffective assistance when he failed to present alibi witnesses because witnesses had personally informed him that they were willing and able to testify). Significantly, in each of the cases in which ineffective assistance was found, counsel was aware of the substance of the potentially exculpatory testimony *before* the trial commenced. Accordingly, the issue before this court is whether a claim of ineffective assistance of counsel can be sustained when counsel failed to investigate a person whose name was mentioned to counsel before the trial

but no other information was provided that would suggest a reason to investigate.

The majority concludes that Schwartz should have recognized that Rivera "*might* possess" information helpful to the petitioner. (Emphasis added.) I disagree. There is no evidence in the record as to how or when Schwartz learned of Rivera's name other than Schwartz' testimony at the habeas hearing that the petitioner had given him her name. The petitioner himself did not testify that he had given Schwartz her name but only that Rivera should have been called as a witness. Similarly, Schwartz was not asked and did not testify as to when the petitioner had given him Rivera's name or the context in which it had been given. It is thus impossible to know whether the petitioner referred to Rivera as a potential witness, whether he casually mentioned her name in passing or whether he said anything else about Rivera—e.g., that she lived next door or had knowledge regarding his whereabouts when the charged crimes were committed—that would have caused Schwartz to believe that Rivera might have information that would be helpful to the petitioner. Indeed, Schwartz' only other testimony with respect to Rivera was that, although he was aware that Rivera was someone whom the petitioner knew, he was unaware that Rivera was a source of exculpatory evidence.

The majority also concludes that Schwartz should have investigated Rivera because the charges against the petitioner were serious and the petitioner claimed that he was not at the scene of the crime. These facts, however, had nothing to do with Rivera's ability to provide possibly exculpatory information. Indeed, they are counterbalanced, if not outweighed, by the fact that Schwartz was an experienced attorney who had practiced in the area of criminal defense for twenty-five years, had been involved in approximately fifty trials and acknowledged at the habeas hearing that he would have conducted an investigation if he had obtained *any* information that "even remotely appeared to be helpful" to the petitioner's case.

Insofar as the majority further concludes that Schwartz provided ineffective assistance because Rivera was one of a limited number of individuals named by the petitioner and because he knew that Rivera was the petitioner's neighbor and the sister of a key prosecution witness, Schwartz did not testify at the habeas hearing that the petitioner told him that Rivera was his neighbor. The petitioner also said nothing at the habeas hearing about how many people he knew in Bridgeport. Furthermore, the only evidence in the record indicating that Schwartz knew that Rivera was the sister of a key prosecution witness was the petitioner's testimony to that effect when Schwartz attempted unsuccessfully *at trial* to introduce a letter into evidence from the petitioner to Rivera.

As previously discussed, "[t]he reasonableness of an investigation must be evaluated not through hindsight but from the perspective of the attorney when he was conducting it." *State* v. *Talton*, supra, 197 Conn. 297–98. An examination of the record in the present case indicates that Schwartz learned at some point before the trial that the petitioner knew Rivera and that Rivera was related to a key prosecution witness, but that he did not know that Rivera could provide alibi evidence because Rivera did not disclose the purported evidence until eight years after the petitioner's trial. Accordingly, no one involved in the trial, including the petitioner, was aware of the evidence at that time. Moreover, there is no other reason why Schwartz would have contacted Rivera because the petitioner's defense was based on his claim that the key prosecution witnesses were trying to obtain benefits from the state in exchange for implicating him, a subject on which Rivera would have had no reason to testify. Finally, there was no evidence in the record that Rivera was worthy of investigation because she might be involved in the charged crimes or possess information about them.

The majority acknowledges that "merely mentioning an individual is not necessarily enough to trigger counsel's duty to investigate in all cases . . . ." (Citation omitted.) Part I of the majority opinion; see *Chace* v. *Bronson*, 19 Conn. App. 674, 679, 564 A.2d 303 ("[d]efense counsel is not required to investigate everyone whose name happens to be mentioned by the petitioner"), cert. denied, 213 Conn. 801, 567 A.2d 832 (1989); see also *Schwander* v. *Blackburn*, 750 F.2d 494, 500 (5th Cir. 1985) (same). Thus, in evaluating the situation from Schwartz' perspective *at the time of the petitioner's trial*, as a reviewing court is required to do, I would conclude that Schwartz did not render ineffective assistance of counsel because he had no reason to contact Rivera. Indeed, finding otherwise will very likely open the floodgates to a wave of habeas petitions alleging ineffective assistance of counsel supported by the most slender and tenuous of reeds. Accordingly, I respectfully dissent.