IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2018

_____

No. 18-_____

_____

JIMMY FLETCHER MEDERS,

Petitioner,

-v-

WARDEN, Georgia Diagnostic Prison,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the Eleventh Circuit's adherence to its self-styled "no-grading-papers, anti-flyspecking rule" for the application of 28 U.S.C. § 2254(d) is incompatible with this Court's directive in *Wilson v. Sellers*, 138 S.Ct. 1188, 1192 (2018), that a federal court must "review[] the specific reasons given by the state court and defer[] to those reasons if they are reasonable"?

2. Whether the Eleventh Circuit erred in this case when it denied habeas relief by creating and deferring to its own reasons supporting the state court decision instead of assessing the objective reasonableness of that decision in light of the record and this Court's clearly established law?

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Petitioner, Jimmy Fletcher Meders, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

CITATION TO OPINION BELOW

The decision of the Eleventh Circuit affirming the district court's denial of federal habeas relief is published at 911 F.3d 1335 (11th Cir. 2019), and is attached to this petition as Appendix A. The state habeas court order reviewed by the Eleventh Circuit is attached as Appendix B.

JURISDICTION

The decision of the Eleventh Circuit at issue here was announced on January 4, 2019. Rehearing and rehearing *en banc* were denied on March 4, 2019. By order dated May 29, 2019, Justice Thomas extended the time to file this petition to and including August 1, 2019.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional and statutory provisions:

The Sixth Amendment to the United States Constitution, which provides: "In all criminal proceedings, the accused shall enjoy the right … to have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution, which provides: "No State shall ... deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 2254(d), which provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

This Court granted certiorari in *Wilson v. Sellers*, 138 S.Ct. 1188 (2018), "[b]ecause the Eleventh Circuit's opinion [in that case] create[d] a split among the circuits," with the Eleventh Circuit on one side and at least six circuit courts of appeals on the other. *Id.* at 1193 (collecting cases). The source of the split was a "matter of methodology," *id*.: While other federal habeas courts informed their applications of 28 U.S.C. § 2254(d) with the actual reasoning articulated by the state courts and, where necessary, employed a "'look through' presumption" to do so, the Eleventh Circuit went the opposite way, forbidding "looking through" an unexplained decision to a reasoned one, and insisting instead on a "'could have supported' approach," which required a federal court "to imagine what might have been the state court's supportive reasoning" and then defer to it. *Id.* at 1195.

At the core of this split lay a fundamental disagreement about the nature of the inquiry § 2254(d) requires federal courts to perform. The courts at odds with the Eleventh Circuit had a settled practice of examining a state court's reasoning to determine whether its decision "involved" an unreasonable application of federal law, § 2254(d)(1), or "was based on" an unreasonable determination of the facts, § 2254(d)(2). The Eleventh Circuit, on the other hand, had long maintained that analyzing a state court's reasoning in this way "'smacks of a "grading papers" approach that is outmoded in the post-AEDPA era.'" *Wilson v. Warden*, 834 F.3d 1227, 1239 (11th Cir. 2016) (en banc) (quoting *Bishop v. Warden*, 726 F.3d 1243, 1255 (11th Cir. 2013) (quoting, in turn, *Wright v. Sec'y, Dep't of Corr*., 278 F.3d 1245, 1255 (11th Cir. 2002)). So entrenched in the Eleventh Circuit was this aversion to the majority approach that even a clear instruction from Justice Ginsburg that § 2254(d) "directs a federal habeas court to train its attention on the particular reasons – both legal and factual – why state courts rejected a state prisoner's federal claims,"

Hittson v. Chatman, 135 S. Ct. 2126, 2126 (2015) (Ginsburg, J., concurring in denial of certiorari) was summarily dismissed by the en banc majority, *Wilson*, 834 F.3d at 1242.

In *Wilson*, this Court wasted no time resolving the core of the dispute against the Eleventh Circuit. Within the first two paragraphs of its opinion, the Court quoted Justice Ginsburg's *Hittson* concurrence with approval, reiterated that "a federal habeas court [applying § 2254(d)] simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable," and observed that this Court has "affirmed this approach time and again." *Wilson*, 138 S.Ct. at 1191-92. Indeed, as the Court made clear in its third paragraph, "[t]he issue" in *Wilson* was not *whether* § 2254(d) requires analysis of reasoning articulated by a state court, but "*how* a federal habeas court is to find the state court's reasons when the relevant state-court decision on the merits … does not come accompanied with those reasons." *Id.* at 1192 (emphasis added).

Despite the clarity of *Wilson*'s directive, the Eleventh Circuit's decision in the case of petitioner, Jimmy Meders – issued barely eight months later – makes equally clear that it remains committed to a contrary position. Without bothering to try to reconcile its own "no-grading-papers, anti-flyspecking rule" with *Wilson*'s emphasis on a state court's "specific reasons," the Eleventh Circuit declared that its own rule "remains the law of the circuit." *Meders v. Warden*, 911 F.3d 1335, 1350 (11th Cir. 2019). Consistent with that pronouncement, the court dismissed Meders' contentions that the state court order in his case showed material § 2254(d) defects by invoking a series of its own decisions – and none of this Court's – to condemn Meders' "line-by-line critique of the state court's reasoning" as "not the proper approach." *Id.* at 1350. The court then marginalized *Wilson* as having been "about" nothing more than "which state court decision we are to look at," and denied relief using "deferential" review of an analysis no state court ever articulated. *Id.*

In the months since the decision in this case, its impact has spread to cases in the district courts within the Eleventh Circuit, at least nine of which have already incorporated *Meders*-derived, *Wilson*-resistant methodological boilerplate in orders denying relief. Outside the Eleventh Circuit, no court has shown such open defiance of *Wilson*.

Because the decision below flouts *Wilson*, reconfirms the Eleventh Circuit as an outlier among the federal courts of appeals, is already adversely affecting numerous other cases within the circuit, and deprives petitioner Meders of the habeas relief to which he is entitled, this Court should grant certiorari and take corrective action as soon as possible.

STATEMENT OF THE CASE

I. Relevant facts from trial.

Meders was convicted and sentenced to death in Brunswick, Georgia for the murder and armed robbery of a Jiffy Store convenience store clerk. The evidence showed that he and two other men – Creel and Arnold – were a6t the store when the killing occurred around 2:35 a.m. on October 14, 1987; it also showed that the murder weapon, a Dan Wesson .357, belonged to Meders, and that at the time of his arrest Meders was found in possession of bait money from the store and some food stamps. The central dispute at trial was which man possessed the gun at the time it was used to shoot the clerk. Lifelong friends Creel and Arnold said it was Meders; Meders, the odd man out, pointed to Arnold. No physical evidence confirmed either side's account. As the prosecutor and defense counsel each told the jurors, the outcome would depend upon whom they were persuaded to believe.[1]

[1] The factual summaries set forth in the sections below are consistent with the recitation in parts I.A. through C. of the Eleventh Circuit's opinion, 911 F.3d at 1338-1347, which is in turn consistent with the record developed at trial and in the state court post-trial proceedings.

A. The State's case.

The State's case-in-chief rested on the testimony of four witnesses: Arnold and Creel, who were present when the shooting occurred; Randy Harris, who was Arnold's cousin and Meders' boss; and Det. Jack Boyet, who oversaw law enforcement's investigation. Through their trial testimony, these witnesses made several assertions relevant to the ineffective assistance of counsel claim denied by the Eleventh Circuit below.

1. Arnold and Creel.

Arnold and Creel gave largely matching accounts of the hours before and after the offense. As relevant here, both reported spending the afternoon and part of the evening of October 13, 1987, drinking together with Meders, first at Harris' house and then at a motel room Harris had rented. Both said they later left the motel with Meders and remained with him continuously, riding around and drinking, before stopping at the Jiffy Store in the early hours of October 14, where Meders surprised them by robbing and shooting the store clerk. Doc. 12-34 at 39-40; Doc. 12-35 at 1-10; Doc. 12-34 at 1-16.[2] Both specifically denied dropping Meders off at his home before picking him up again later in the evening or knowing Meders had a gun. Doc. 12-35 at 5; Doc. Doc 34 at 9. And both specifically denied knowledge of or participation in a pair of drive-by shootings of pickup trucks that occurred shortly before the homicide. Doc. 12-35 at 5; Doc 12-34 at 28. Defense counsel offered nothing to contradict any of these categorical denials.

2. Harris.

Harris was the State's first witness. He confirmed that Arnold, Creel, and Meders spent time drinking with him during the afternoon and evening of October 13, and that the trio left together in Harris' white Roadrunner. Doc. 12-33 at 15-22. He testified that he next saw Meders

[2] "Doc. __-__" refers to the document number and page number of the record as organized by the State and filed with the District Court.

around 3:00 a.m. when Meders came to him at the motel to confess having "just blowed a man's head off over $38." *Id.* at 24. Harris also related that, in response to a call from Arnold, he left immediately to pick up Arnold and Creel from a trailer park and took them to his house, where the three men talked about the night's events and Harris advised the other two to take their story to the police. *Id*. at 24-25; *id*. at 35-37. Harris further acknowledged that he was questioned by police twice during the ensuing hours: once at his body shop, and again at the police station. *Id*. at 39; Doc.12-35 at 1. Defense counsel did not question him about the substance of his prior statements.

3. Det. Jack Boyet.

Boyet and two other senior investigators found Meders at his home around 11:00 a.m. on the morning of the homicide after receiving a tip that Meders had confessed to killing a man at the Jiffy Store. Doc. 12-40 at 2, 15.[3] Meders agreed to accompany the officers for an interview; he denied knowing anything about the homicide at the Jiffy Store, and was arrested.[4] Doc. 12-40 at 8-13, 20. Simultaneously, three officers and a Georgia Bureau of Investigation agent executed a search warrant at Meders' house in an unsuccessful effort to find the murder weapon. Doc. 12-38 at 32-33. The gun finally turned up two days later, on October 16, under Meders' water bed, when investigators executed a second warrant obtained on the basis of a tip from Harris, who claimed to have "received information" that the pistol was "in the waterbed." Doc. 12-40 at 26-27, 44.

[3] Meders gave the officers a .22 revolver from his jacket pocket, and a pat-down search yielded 17 food stamps. Doc. 12-40 at 11-12, 19-20.

[4] Another witness testified that an inventory of Meders' wallet included two pieces of bait money from the Jiffy Store and some additional food stamps. Doc. 12-38 at 34-38. In fact, the wallet also contained a citation for selling cocaine. Doc. 12-84 at 4-6. As the district court recognized, that citation was inadmissible and prejudicial under Georgia law, Doc. 59 at 48, n.12, but defense counsel did not notice, and allowed the wallet and its contents to go to the jury. Doc. 12-108 at 6.

Boyet also told the jury that Meders was interviewed twice on the day of his arrest and denied knowledge of the homicide, Doc. 12-40 at 10, 15-16, and that, just over a year later, Meders gave a detailed, voluntary statement in which he admitted being present at the homicide but insisted Arnold had been the shooter, saying "no witnesses," and had ordered Meders to "get the money." *Id.* at 22-25. Meders told Boyet that he had been with Arnold, Creel, and Harris during the afternoon before the homicide, had then been dropped off at home, where he passed out on the couch, and was later awakened by Arnold, who demanded that Meders get his gun and leave again with Arnold and Creel. Meders also told Boyet that after the group paid another visit to Harris at the motel, Arnold took possession of the gun, used it to commit drive-by shootings from the car, and then to kill the store clerk. Doc. 12-40 at 21-24. Boyet was asked on direct and cross-examination whether he had acquired any information to corroborate Meders' story about the drive-by shootings. He told the jury he had not, and defense counsel offered nothing to contradict that assertion. *Id*. at 26, 34.

B. The defense case.

1. Sherry Meders and Wayne Martin.

Meders' wife, Sherry, and his friend, Wayne Martin, both corroborated Meders' statement to Boyet that he had passed out on his own couch during the later evening hours preceding the homicide.[5] Doc. 12-41 at 24-26; Doc. 12-42 at 2-6. Sherry Meders also confirmed that Arnold arrived at the house that evening asking for a gun, and left with both the gun and Meders.[6] Doc.

[5] Two other defense witnesses told the jury they had seen Arnold, Creel, and Meders in a car around the time of the homicide. Doc. 12-42 at 21-22; Doc. 12-43 at 32-33. Another testified that he had seen Arnold in a bar the day after the offense, and that Arnold had said he needed to meet with Creel and Harris to "see what the deal was" and "get the story straight." Doc. 12-44 at 19-20.

[6] Sherry Meders admitted on cross-examination that she had not revealed either of these facts during her police interview. Doc. 12-41 at 34.

12-41 at 26-27. She further explained that she left the house to stay with her father after Meders' arrest, and that the door to the house could not be secured. She denied telling Harris that the murder weapon could be found under the water bed.[7] Doc. 12-41 at 37-39.

2. Meders.

Meders testified on his own behalf and recounted the same sequence of events he had told Boyet before trial: drinking with Arnold, Creel, and Harris; returning home and passing out on the couch; waking again when Arnold arrived at about 11:00 p.m. to get him and his .357 Dan Wesson. He also explained that Arnold had wanted the gun to take "revenge" against some local enemies, including one Keith Bowen, and that Arnold used the gun to shoot at two parked trucks as the three men drove around. Doc. 12-45 at 20-38. Also consistent with his statement to Boyet, Meders told the jury that Arnold still had possession of the gun when the group reached the convenience store, and that Arnold surprised him by pulling the gun, killing the clerk, then stating, "No witnesses. Get the money." Doc. 12-45 at 40; Doc. 12-46 at 1-2; Doc. 12-47 at 11. According to Meders, he parted company with Arnold – who still had the gun – and Creel a short while later at a nearby trailer park. Doc. 12-46 at 3-4. Meders denied visiting Harris to confess immediately after the homicide, and maintained instead that Harris had visited him later in the morning and admonished him to stay quiet about what he knew, which he did. Doc. 12-47 at 3, 7-8.

Unlike the State's witnesses, Meders was subjected to a variety of credibility challenges in front of the jury. As the capital defendant on trial, he had an inherent motive to tell a self-serving story. He also had to acknowledge that he had waited over a year before providing his account to Boyet; that the Jiffy Store bait money was found in his possession; and that the murder weapon was owned by him and found by police (using an uncanny tip from Harris) under his bed. And

[7] Harris later testified in rebuttal that Sherry Meders was his source for the location of the gun. Doc. 12-47 at 18.

unlike Arnold, Creel, and Harris, whose stories were consistent, mutually reinforcing, and uncontradicted by lead investigator Boyet, Meders' account stood before the jury virtually alone and almost totally uncorroborated.

C. Closing arguments.

Both lawyers used their closing arguments to frame the trial as a credibility contest. Defense counsel John Davis[8] called attention to the testimonial conflict – the only material one he had managed to create – over whether Arnold and Creel had dropped Meders off before returning to get him and his gun. He also invited the jurors to discount the State's witnesses on other grounds, especially Harris, whose gun-beneath-the-waterbed tip, counsel argued, was too convenient to be believed, and whose drug-debt motive theory lacked credibility. Though he had presented no evidence to support either view, he maintained that the jurors should nevertheless have "a great many grave doubts" about what they had heard from the State. Doc. 12-48 at 1-8.

Prosecutor John Johnson held a stronger hand in the credibility contest, and he played it. In particular, he urged the jury to focus on witness consistency, "because that is an important part of their credibility," and touted his own witnesses' performance on that metric:

> Have they stuck with their story, have they told the same thing all the way down the line, and if you just decided credibility based on that, if, it that is all you look at, then Randy Harris, Bill Arnold, Greg Creel, the police officers all told the same story all the way down the line from day one.

Id. at 11-12. Lest they worry about mistaking a breakdown in advocacy for consistency, Johnson further assured the jurors that "Mr. Davis has defended his client with all of the evidence or information that he had at his disposal." *Id*. at 37.

[8] Davis, then 71 years old, was the county public defender and Meders' only defense lawyer. Doc. 12-170 at 13, 17. While he had enjoyed a lengthy career as a prosecutor, a judge, and a U.S. Congressman, Doc. 12-204 at 23-24, his best years as an advocate were behind him. *See Waters v. Thomas*, 46 F.3d 1506, 1546 (11th Cir. 1995) (en banc) (Clark, J., dissenting).

D. Jury questions during guilt/innocence phase deliberations.

The jury sent a total of five questions, three of which relate directly to the issues presented here. Jury Questions 3 and 4 suggested skepticism of Harris' serendipitous tip about the location of the murder weapon:

> 3. During the execution of the first search warrant was the bedroom searched, if so was the waterbed searched?
>
> 4. Can fingerprints be taken and if so were they taken on the waterbed mattress?

Doc. 12-53 at 14. Similarly, Jury Question 5 indicated that Meders' account of the drive-by truck shootings – uncorroborated though it was – was on the jurors' minds despite the prosecution witnesses' unanimous denials:

> 5. Was there any reports filed on the incident of the truck, on Ga Hwy 303, reported between the day, after or between then and now, being shot at?

Doc. 12-53 at 14.

The trial judge responded by instructing the jury to base its findings "on the evidence that has been presented to you during the course of this trial." Doc. 12-50 at 20. After three hours of deliberations, the jury convicted Meders of malice murder and armed robbery. Doc. 12-50 at 14, 25. The same jury later returned a death sentence after asking whether life without parole was an option and being told they could not consider that possibility. Doc. 12-52 at 16; 21-22.

II. Direct appeal and proceedings on remand.

Represented by new, volunteer counsel, Meders appealed to the Georgia Supreme Court. That court rejected most of his claims of error, but granted the State's request to remand the case for a hearing in the trial court on the possibility that trial counsel Davis had been ineffective. *Meders v. State*, 389 S.E.2d 320, 325 (Ga. 1990). Back on remand, the trial court denied Meders' new lawyers' request for expert assistance and refused to delay the proceeding to await Davis'

release from a hospitalization.[9] The hearing on Davis' ineffectiveness lasted one day and focused mainly on information discovered in documents that prosecutor Johnson insisted had been in his open file, but which Davis – whose file contained none of them, Docs. 12-96 through 12-106 – either failed to review or failed to appreciate, and consequently failed to use at trial. As relevant here, the revelations included the following:

A. Police documentation of the truck shootings.

The State's file contained two police reports documenting the drive-by truck shootings that Meders had described, Arnold and Creel had categorically denied, and Boyet had characterized as unconfirmed. The first report came from a Margaret Bowen, who related that around 12:30 a.m. on October 14, 1987 (around two hours before the homicide), a car stopped in front of her home, squealed its tires, and an occupant of the vehicle fired a shot that struck the wall of the house. Ms. Bowen testified at the remand hearing, confirming the police report and informing the court that she had a son named Keith Bowen; her other son, Billy Bowen, also testified, telling the court that the shot from the car had just missed a pickup truck parked in the driveway. Doc. 12-79 at 19-33. The second report concerned a shooting between 1:00 and 1:30 a.m. on October 14, 1987 (between 60 and 90 minutes before the homicide). This one came from Robert Brown, who testified that he had an "unfriendly by all terms" relationship with Creel. Doc. 12-79 at 35. Brown's wife also testified, recounting that when she provided the bullet that hit the couple's truck to the officer who took the report, he remarked that "it was the same type of bullet that had killed that man …. at the Jiffy Mart." Doc. 12-80 at 13-18.[10]

[9] Davis later died before Meders was able to secure his testimony. Doc. 12-204 at 6.

[10] The presence of these reports, not only in Johnson's file but also in Boyet's, Doc. 12-82 at 25, showed that Johnson had suborned, and Boyet had given, false testimony under oath. Whenever the possibility of prosecutorial misconduct arose at the remand hearing, however, the State

B. Prior inconsistent statements by Arnold, Creel, and Harris.

The State's file also included transcripts of tape-recorded police interviews with Arnold, Creel, and Harris that contradicted their trial testimony in several material respects.

1. Arnold and Creel.

Arnold and Creel were each interviewed by police on October 15, just over a day after the homicide. Contrary to their trial testimony – but consistent with the accounts of Meders, his wife Sherry, and his friend Wayne Martin – both men reported that they had indeed dropped Meders off at home on the night of October 13 and returned to pick him up again later that evening. Doc. 12-156 at 9, 25. Additionally, Creel also told police he knew Meders had a gun that night, a fact he later denied in front of the jury. *Id.* at 17.

2. Harris.

Harris spoke to police twice on October 14 (within hours of the homicide) and again on October 16. Those statements contradicted his trial testimony on two significant matters.

a. The alleged confession to Harris.

Harris was the only trial witness (outside of Arnold and Creel, the alleged eyewitnesses) to claim to have heard Meders confess, and he did so with a specific quote attributed to Meders: "I just blowed a man's head off over $38.00." Doc. 12-33 at 24. In his first statement to police, however, Harris denied any knowledge of the homicide. Doc. 12-88 at 15. In his second statement, given an hour later, Harris made clear that he had no idea where the Jiffy Store clerk had been shot:

Harris: Where did he shoot him, in the head?

Officer: Did he tell you?

---

objected that such issues were beyond the scope of the remand order, and the judge sustained those objections. Doc. 12-82 at 39 through Doc. 12-83 at 7.

Harris: He didn't tell me, I was just asking.

Officer: Well, I can't tell you.

…

Harris: I was just asking, he just said he shot him….

Doc. 12-87 at 19-20.

b. The location of the .357 Dan Wesson.

The State's file also showed an evolution in Harris' story on the whereabouts of the murder weapon. On October 14, he told police he did not know where they might find the gun. Doc. 12-87 at 18-19. Two days later, he appeared at the police station to tell Boyet that "he had been thinking about it and the only place he could think of where Meders would have hidden the gun he used was the water bed in Meders' room." Doc. 12-89 at 14. And by the time he testified at trial, Harris claimed instead that the information had come from Meders' wife, Sherry. Doc. 12-47 at 18.

C. The state courts' denial of relief.

On the basis of the information revealed during the remand hearing, Meders argued, *inter alia*, that his trial lawyer was constitutionally ineffective in failing to use the prior statements and reports from the prosecutor's file both to impeach Arnold, Creel, and Harris, and to affirmatively support Meders' own account on the issues most disputed at trial. The last state court to deny that claim on the merits was the Georgia Supreme Court, and it did so exclusively on the ground that "[t]he trial court's nine-page order [on remand] persuasively demonstrates that Meders has failed to overcome the 'strong presumption' that Meders' trial counsel performed effectively." [11] *Meders*

[11] Later, in state habeas corpus proceedings, a different judge granted Meders a new trial based on trial counsel's ineffectiveness. Doc. 12-204 at 21-41. The Georgia Supreme Court reversed, finding that the claim was procedurally barred as previously litigated and that the habeas court incorrectly found cause and prejudice. *Schofield v. Meders*, 632 S.E.2d 369, 372-373 (Ga. 2006).

v. State, 411 S.E.2d 491, 492 (Ga. 1992).

The portion of the trial court's order specifically addressing the impeachment of the State's witnesses and the corroboration of Meders' testimony covers just under three pages. *See* Doc. 12-108 at 7-9. After characterizing this theory of counsel's ineffectiveness as "[t]he most persuasive argument made by the defendant," the order briefly summarized the factual disputes over the drive-by truck shootings and whether Meders was dropped off at home before being picked up later. Doc. 12-108 at 7-8. With no further analysis – *e.g.*, of how the credibility of the prosecutor and his witnesses would have suffered, or of what the jury questions suggested about the importance of the information trial counsel failed to present – the trial court's order concluded as follows:

> While attacking the credibility of the State's key witnesses in the manner suggested by defendant may well have been an effective and proper course of action, the fact remains that there is overwhelming evidence supporting the conviction of the defendant and tending to undermine his own credibility. Therefore, after carefully considering the defendant's contentions and the record, the Court finds that the defendant has not carried his burden of showing that there exists a reasonable probability that but for trial counsel's alleged deficiencies the result of the trial would have been different.

Id. at 9.

After additional state court proceedings not relevant here, Meders petitioned for a writ of habeas corpus in the United States District Court for the Southern District of Georgia. That court found counsel's performance deficient, but held that the state court's determination that Meders was not prejudiced did not involve an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). The court later issued a certificate of appealability on "Whether Meders was denied his constitutional right to effective assistance of counsel during the guilt-innocence phase of trial." Doc. 85 at 20.

III. The Eleventh Circuit decision challenged here.

A. *Wilson*'s negligible effect on circuit law.

On appeal to the Eleventh Circuit, Meders' arguments followed the "approach" *Wilson* would later describe as having been "affirmed" by this Court "time and again." *Wilson*, 138 S.Ct. at 1192. Because deficient performance was undisputed, Meders focused his § 2254(d) arguments on demonstrating the specific defects in the state court's determination that he had not met *Strickland*'s prejudice prong. *See* Br. of Petitioner at 36-39 (arguing that state court unreasonably applied *Strickland* and its progeny by focusing on the incriminating evidence against Meders while ignoring the impeachment value of the police reports and prior statements, the effect on the overall credibility of each side's case, and the jury's specific interest in those matters as reflected in Jury Questions 3, 4, and 5); *id.* at 39-51 (adding detailed analysis showing that no court reasonably applying *Strickland* could have failed to find prejudice).

In response to Meders' arguments, the Eleventh Circuit acknowledged that *Wilson* – which was decided after briefing in this case – required that it "'look through' the Georgia Supreme Court's decision to th[e] trial court order," but then made clear that it read *Wilson* to have little, if any, further effect on § 2254(d) analysis. *Meders*, 911 F.3d at 1349. After quoting *Wilson*'s directive that § 2254(d) "requires the federal habeas court to train its attention on the particular reasons – both legal and factual – why state courts rejected a state prisoner's federal claims," the court of appeals immediately declared that "[t]hat does not mean we are to flyspeck the state court order or grade it." *Id.* "What it means," the court continued, "is we are to focus not merely on the bottom line ruling of the decision but on the reasons, if any, given for it." *Id.* The court then stated that, in this case, the "bottom line" was the state court's conclusion that counsel's errors "did not amount to ineffective assistance of counsel," and the "reason" for this conclusion was that "the evidence counsel failed to present was cumulative and outweighed by the strong evidence of guilt,

and the objections that they [sic] failed to make would have been futile or otherwise would have made no difference anyway." *Id.*

Recognizing that Meders' briefing proposed a more particularized examination of the state court's rationale than its own broadly framed "reason" would permit, the Eleventh Circuit condemned what it termed his "line-by-line critique of the state court's reasoning" as "not the proper approach" under circuit law. *Id.* at 1350; *see also id.* (citing no Supreme Court decisions but emphasizing that "This Court [(*i.e.*, the Eleventh Circuit)] has stressed that in applying AEDPA deference federal courts are not to take a magnifying glass to the state court opinion or grade the quality of it."). Further confirming that, in its view, circuit law continues to govern this aspect of § 2254(d) methodology, the court defined the limits of *Wilson*'s impact as it sees them:

> *Wilson* was about which state court decision we are to look at if the lower state court gives reasons and the higher state court does not. It was not about the specificity or thoroughness with which state courts must spell out their reasoning to be entitled to AEDPA deference or the level of scrutiny that we are to apply to the reasons that they give. Our no-grading-papers, anti-flyspecking rule remains the law of the circuit.

Id. at 1351. After invoking *Johnson v. Williams*, 568 U.S. 289, 300 (2013), and *Harrington v. Richter*, 562 U.S. 86, 100 (2011), the Eleventh Circuit added that "[o]nly the clearest indication that *Wilson* overruled the Supreme Court's previous decisions, such as *Johnson*, would warrant ignoring those decisions, and there is no indication at all that *Wilson* did so." *Meders*, 911 F.3d at 1351.

Finally, having reaffirmed the dominance of its own *Richter*-inspired methodology, the Eleventh Circuit declared that "the question" governing Meders' ability to satisfy § 2254(d) "is whether every fair-minded jurist would conclude that prejudice has been established." *Id.* at 1351 (citing *Williamson v. Fla. Dep't of Corr.*, 805 F.3d 1009, 1016 (11th Cir. 2015)).

B. Deference to findings not made by the state courts.

The Eleventh Circuit concentrated its merits discussion on developing and deferring to theories supporting the two "reasons" specified by the state court: that there was "overwhelming evidence" of Meders' guilt, and that there was evidence "tending to undermine his own credibility." Doc. 12-108 at 9. Consistent with its determination that *Wilson* did not displace the "no-grading-papers, anti-flyspecking rule" as "the law of the circuit," the court made liberal use of reasoning neither articulated nor suggested by the state court. *See*, *e.g.*, *Meders*, 911 F.3d at 1352 (devising new theory never previously suggested by the state court or the State to support the observation that "it's not clear that [Harris] was lying about Meders confessing …"); *id.* (listing previously unmentioned reasons for regarding "Harris' incentive to lie" as "much weaker than that of Meders, Arnold, or Creel"); *id*. at 1353 (inferring Meders' guilt from the asserted lack of "evidence that anyone had planted [the murder weapon] under [Meders'] waterbed"); *id.* (observing that "it seems highly unlikely that Arnold would not have ended up with any of the stolen money" if he had been the shooter); *id.* (detailing reasons that corroborating Meders' account "would not have repaired his credibility" after "a year-long course of lies …").

The Eleventh Circuit concluded by making clear that its disposition rested exclusively on its own application of § 2254(d), not *de novo* review, and that the standard it applied was material to the outcome:

> Because our review is deferential, we need not determine whether our decision would be the same if we were conducting a *de novo* review, though we recognize that a different standard of review would make the questions in this case closer ones. Looking through the AEDPA lens, we conclude that a fairminded jurist could agree with the state trial court's decision. Or put another way, not every reasonable jurist would conclude that the state trial court's decision was contrary to or an unreasonable application of Supreme Court precedent. And for that reason, the district court did not err in denying Meders' petition for a writ of habeas corpus.

Meders, 911 F.3d at 1355.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit's "no-grading-papers, anti-flyspecking rule" contravenes *Wilson*, reopens the circuit split this Court sought to resolve in *Wilson*, and is already proliferating quickly through district court cases within the circuit.

This Court's decision in *Wilson* began with the observation that,

> Deciding whether a state court's decision "involved" an unreasonable application of federal law or "was based on" an unreasonable determination of fact requires the federal habeas court to "train its attention on the particular reasons – both legal and factual – why state courts rejected a state prisoner's federal claims," and to give appropriate deference to that decision.

Wilson, 138 S.Ct. at 1191-92 (quoting *Hittson*, 135 S.Ct. at 2126 (Ginsburg, J. concurring in denial of certiorari)). As the Court added a few sentences later, it has "affirmed this approach time and again." *Id.* at 1192. The Court backed that statement with three examples – *Porter v. McCollum*, 558 U.S. 30, 39-44 (2009) (per curiam); *Rompilla v. Beard*, 545 U.S. 374, 388-92 (2005); and *Wiggins v. Smith*, 539 U.S. 510, 523–538 (2003) – but it could have included many more.[12] What

[12] *See, e.g.*, *Brumfield v. Cain*, 135 S.Ct. 2269 (2015) (vacating Fifth Circuit's denial of relief after detailed examination of record and governing standard revealed dispositive state court factual findings were unreasonable under § 2254(d)(2)); *Lafler v. Cooper*, 566 U.S. 156, 173 (2012) (granting relief under § 2254(d)(1) where state court "failed to apply *Strickland*," incorrectly focused on whether prisoner's plea had been "knowing and voluntary," "made an irrelevant observation about counsel's performance at trial and mischaracterized [prisoner's] claim"); *Panetti v. Quarterman*, 551 U.S. 930, 952-953 (2007) ("The state court's denial of certain of petitioner's motions rests on an implicit finding: that the procedures it provided were adequate to resolve the competency claim. ... [T]his determination cannot be reconciled with any reasonable application of the controlling standard ...."); *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 257-258 (2007) (state court's "formulation of the issue" and inattention to "the fundamental principles established by [this Court's] most relevant precedents, resulted in a decision that was both 'contrary to' and 'involved an unreasonable application of, clearly established Federal law'"); *Penry v. Johnson*, 532 U.S. 782, 796, 803-804 (2001) (observing that "[t]he Texas court did not make the rationale of its holding entirely clear," then holding that, "to the extent the [state court] concluded that the substance of the jury instructions given at Penry's … hearing satisfied our mandate in *Penry I*, that determination was objectively unreasonable"); (*Terry*) *Williams v. Taylor*, 529 U.S. 362, 397 (2000) (finding § 2254(d)(1) satisfied because "[t]he Virginia Supreme Court's own analysis of

this Court's numerous examples of § 2254(d)'s application have in common – whether they resulted in grants or denials of relief – is reliance on the *reasoning* provided by the state court as the definitive basis for judging the reasonableness of a decision in light of the governing law and the factual record. *Wilson* neatly distilled that nearly two-decade old, "straightforward inquiry" when it said that a federal habeas court with access to "a reasoned [state court] opinion … simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Wilson*, 138 S.Ct. at 1192.

The Eleventh Circuit has its own long history of strongly held views on § 2254(d) methodology, and, at least with respect to the use of state court reasoning to inform a federal habeas court's analysis, they have always been at odds with this Court's. From *Wright v. Sec'y for Dept. of Corrs*., 278 F.3d 1245, 1254–55 (11th Cir. 2002), which declared that § 2254(d)'s "statutory language focuses on the result, not on the reasoning that led to the result," through *Gill v. Mecusker*, 633 F.3d 1272, 1291 (11th Cir. 2011), which read *Richter* as "confirm[ation] … that the 'precise question' that must be answered under the AEDPA standard must focus on [the] state court's ultimate conclusion," the Eleventh Circuit steadfastly ignored the accumulating body of this Court's decisions pointing the other way. Even when Justice Ginsburg concurred in the denial of certiorari in *Hittson* to warn the Eleventh Circuit that it had "plainly erred" in its reading of *Richter*, a majority of the court dismissed her admonition and doubled-down in *Wilson v. Warden*, 834 F.3d 1227, 1242 (11th Cir. 2016) (en banc).

The decision in this case is the Eleventh Circuit's latest, and by far its most transparent, action in defiance of this Court's teachings on § 2254(d) methodology. Without so much as a phrase purporting to distinguish *Wilson*'s mandate to "simply review the reasons given by the state

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prejudice" showed it "mischaracterized at best the appropriate rule," and "failed to evaluate the totality of the available mitigation evidence").

court," *Wilson*, 138 S.Ct. at 1192, from its own pejoratively phrased "no-grading-papers, anti-flyspecking rule," the court of appeals declared that its rule, not this Court's, "remains the law of the circuit." *Meders*, 911 F.3d at 1330. Meders' research indicates that no other court of appeals has taken such a position in the wake of *Wilson.*[13] Thus, just as it was before that decision, the Eleventh Circuit is once again on the small end of a circuit split requiring this Court's attention.

The need for prompt intervention is further underscored by the impact that the reinvigorated "no-grading-papers, anti-flyspecking rule" is already having within the Eleventh Circuit. At the court of appeals level, at least one other panel has invoked the decision below as justification for refusing to evaluate state court reasoning,[14] while another, without even mentioning *Wilson*, has expressed continuing adherence to *Gill* and the "could have supported" method.[15] And in the district courts, one court appears to have taken its organization and multiple

[13] Two other courts of appeals have issued decisions that may involve departures from *Wilson*, though neither is nearly as explicit as the Eleventh Circuit in this case. One is *Langley v. Prince*, 926 F.3d 145 (5th Cir. 2019) (en banc), in which the Fifth Circuit majority cited the Eleventh Circuit's decision in this case, *see id.* at 163, and the dissent contended that the majority violated *Wilson* "[b]y relying on *post hoc* rationalizations that cannot be squared with what the state court actually said …," *id.* at 174. The other is *Schmidt v. Foster*, 911 F.3d 469, 489 (7th Cir. 2018) (en banc), in which the dissent noted the majority's reliance on a "theory" not reflected in the state court's reasoned decision, and followed that observation with a "*Cf.*" citation to "*Wilson v. Sellers*, 138 S.Ct. 1188, 1191–92 (2018) (federal habeas review should ordinarily focus on state courts' stated reasons rather than those that might be imagined).").

[14] *Wiggins v. Sec'y, Fla. Dep't of Corr*, 766 Fed.Appx. 817, 821 (11th Cir. 2019) (quoting *Meders*, 911 F.3d at 1350) ("'This Court has stressed that in applying AEDPA deference federal courts are not to take a magnifying glass to the state court opinion or grade the quality of it.'").

[15] *Whatley v. Warden*, 927 F.3d 1150, 1182 (11th Cir. 2019) ("Indeed, we are not limited to the reasons the [state] Court gave and instead focus on its 'ultimate conclusion,' *see Gill*, 633 F.3d at 1291 … Under 28 U.S.C. § 2254(d), we must 'determine what arguments or theories ... *could* have supported ... the state court's decision.' *See Richter*, 562 U.S. at 102.") (emphasis by the Eleventh Circuit).

key phrases directly from the *Meders* opinion,[16] and at least nine others have cited the opinion for slightly varying formulations of the "flyspecking" and "paper-grading" prohibition.[17]

In sum, while this Court has already made a considerable investment in correcting the Eleventh Circuit's distinctly minority approach to § 2254(d) methodology, the decision below makes clear that the court of appeals remains resistant. The Court has not hesitated to correct comparable instances of noncompliance with its § 2254(d) cases in the past, and it should not hesitate here. *See, e.g.*, *Lopez v. Smith*, 574 U.S. 1 (2014) (per curiam) (summarily reversing where "the Ninth Circuit failed to comply with" rule of applying § 2254(d) that the Court had "emphasized, time and again"); *Parker v. Matthews*, 567 U.S. 37, 49 (2012) (per curiam) (summarily reversing due to Sixth Circuit's "plain and repetitive error" in applying § 2254(d)).

II. The Eleventh Circuit erred in this case by creating and deferring to its own reasons supporting the state court decision rather than evaluating the objective reasonableness of that decision in light of the facts and the law.

A. Defects in the state court decision.

As described in section III.B., *supra*, the Eleventh Circuit devoted its § 2254(d) analysis to developing then deferring to theories a hypothetical state court might have articulated in support

[16] *See Lee v. Warden*, 2019 WL 1292313, at *4 (S.D. Ga. Mar. 20, 2019) (quoting *Meders* and *Jones v. Sec'y, Fla. Dep't. of Corr*., 834 F.3d 1299, 1311 (11th Cir. 2016)) (identifying a "bottom line" and a subsidiary "reason" in the state court's decision; criticizing the petitioner for not taking "the proper approach" and "engaging in a line-by-line critique of the state court's reasoning"; and rejecting his § 2254(d) argument because it "overemphasizes the 'language of a state court's rationale,' which 'lead[s] to a grading papers approach that is outmoded in the post-AEDPA era'").

[17] *See Draper v. Sec'y, Fla. Dep't of Corr.*, 2019 WL 3037794, at *2 (M.D. Fla. July 11, 2019); *Gallon v. Sec'y, Fla. Dep't of Corr.*, 2019 WL 2567931, at *2 (M.D. Fla. June 21, 2019); *Williams v. Sec'y, Fla. Dep't of Corr.*, 2019 WL 2302063, at *2 (M.D. Fla. May 30, 2019); *O'Steen v. Sec'y, Fla. Dep't of Corr.*, 2019 WL 1506904, at *2 (M.D. Fla. Apr. 5, 2019); *Dingle v. Sec'y, Fla. Dep't of Corr*., 2019 WL 1244101, at *2 (M.D. Fla. Mar. 18, 2019); *Mendoza v. Sec'y, Dep't of Corr*., 2019 WL 1082399, at *2 (M.D. Fla. Mar. 7, 2019); *Wilkes v. Sec'y, Dep't of Corr.*, 2019 WL 497714, at *2 (M.D. Fla. Feb. 8, 2019); *Allen v. Sec'y, Fla. Dep't of Corr*., 2019 WL 447883, at *3 (M.D. Fla. Feb. 5, 2019); *Anderson v. Sec'y, Fla. Dep't of Corr*., 2019 WL 329577, at *3 (M.D. Fla. Jan. 25, 2019).

of denying Meders relief, even though the state court in this case actually relied upon none of them. But that preoccupation with imagining what *might* have been right (or at least *reasonable*) about the state court decision not only contradicted *Wilson*, it also distracted the Eleventh Circuit from the inquiry that § 2254(d) and this Court's cases actually require. At a minimum, that inquiry demands an objective assessment of whether the state court's answer to the federal question raised by a prisoner's claim was arrived at through a faithful application of "clearly established federal law, as determined by" this Court. § 2254(d)(1); s*ee, e.g.*, *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007). In this case, the federal question is whether trial counsel's decidedly deficient performance gave rise to "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. A faithful application of that clearly established standard required the state court to "consider the totality of the evidence before the judge or jury." *Id.* And a faithful application of § 2254(d) required the Eleventh Circuit to ensure that the state court adhered to that requirement. Neither happened.

The clearest proof that the state court failed to carry out *Strickland*'s "totality" inquiry is its own statement that Meders' claim failed because "there is overwhelming evidence supporting the conviction of the defendant and tending to undermine his own credibility." Doc. 12-108 at 9. The first of these findings – that "there is overwhelming evidence supporting the conviction" – can only be read to indicate that the state court "either did not consider or unreasonably discounted," *Porter*, 558 U.S. at 42, the impeachment value of Arnold's, Creel's, and Harris' prior inconsistent statements and the police reports, and therefore failed to recognize their "pervasive effect on the inferences to be drawn from the evidence," *Strickland*, 466 U.S. at 696.

The second finding – that the evidence still "tend[ed] to undermine [Meders'] own credibility" – missed the point in at least two ways: first, by ignoring the obvious import of the jury questions, which showed the jurors' interest in Meders' account despite the attacks on his

credibility they had witnessed; and second, by failing to "tak[e] due account of the effect," *Strickland*, 466 U.S. 696, that impeaching the State's witnesses and corroborating Meders would have had on the overall balance between prosecution and defense. *See, e.g.*, *Lafler v. Cooper*, 566 U.S. 156, 173 (2012) (§ 2254(d)(1) satisfied where state court "failed to apply *Strickland*," focused instead on "irrelevant" points, and "mischaracterized" prisoner's claim); *Porter*, 558 U.S. at 43 (finding § 2254(d)(1) satisfied where state court "unreasonably discounted the evidence" when assessing prejudice); (*Terry*) *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding state court "prejudice determination was unreasonable insofar as it failed to evaluate the totality of" the trial and post-conviction evidence).

B. *Strickland* prejudice.

A "reasonable" application of *Strickland*'s prejudice standard would have produced a different result. The central dispute in the trial evidence was whether Meders or Arnold had possession of the Dan Wesson .357 when the group went to the convenience store. The witnesses on both sides of that dispute had good reasons to be self-serving: Meders obviously wished to avoid a conviction (and death sentence); and Arnold and Creel, who had not been charged with *any* crime in connection with the robbery-homicide, needed to maintain the appearance that they had been entirely ignorant of both the presence of a gun and the existence of a plan to use it at the convenience store. The State's case was built around that theory, *see* Doc. 12-48 at 24 (prosecutor's closing: ""They, they had absolutely no idea what was going on, what, you know, that it was wrong."), and Arnold and Creel (and, by extension, Harris) had every incentive to promote it.

While the state court treated this credibility contest as an easy victory for the prosecution because the evidence favoring the State was "overwhelming" and Meders' credibility was "undermine[d]," that view accounted for only one side of the material facts (the State's). At the

time they retired to deliberate, the jurors were fully aware of the consistent stories told by Arnold, Creel, and Harris, the evidence of Meders' ownership of the gun and possession of the bait money, and the other reasons to discount Meders' story. Despite that assertedly "overwhelming" proof, the jury sent out *three* questions indicating discomfort with the evidence: Jury Questions 3 and 4 sought more reliable proof that Harris' gun-under-the-waterbed tip could be trusted;[18] and Jury Question 5 asked (insightfully) about police reports that could corroborate Meders' account of the drive-by shootings he said Arnold committed. A court reasonably applying *Strickland*'s prejudice inquiry would recognize these questions as clear signs that the jury did not regard the State's proof as "overwhelming" or Meders' credibility as beyond repair. The state court here, however, did not even acknowledge the existence of the jury questions before denying Meders' claim.

Given the apparent closeness of the question even on the one-sided evidence as it went in at trial, there is at least a reasonable probability that the information defense counsel failed to utilize would have tipped the scales in Meders' favor. *See Strickland*, 466 U.S. at 696 ("[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support."). Arnold's and Creel's pretrial statements would have impeached their trial testimony, corroborated Meders', and refuted the prosecutor's closing argument that the state's witnesses had all told the same story since day one; the police reports documenting the shootings (and the witnesses who backed those reports) would have gone directly to the issue the jury seized upon in Jury Question 5, further supporting Meders, undercutting Arnold and Creel (and Det. Boyet), and taking the legs out from under the State's theory that its two star witnesses were credible, innocent bystanders; and Harris' prior inconsistent statements

[18]The jury's decision to pose these questions contradicts the Eleventh Circuit panel's *post hoc* assertion that "there was no evidence that anyone had planted [the murder weapon] under [Meders'] waterbed." *Meders*, 911 F.3d at 1353. Whether or not there was affirmative *evidence* of planting, there was – as the jury questions demonstrate – ample reason for *suspicion*.

would have amplified the same suspicions about his veracity that prompted Jury Questions 3 and 4.

In a case both sides characterized as a credibility contest, the effect of these changes to the evidentiary picture – all of which materially strengthened Meders' position while weakening the State's – would have been to shift the balance of proof sharply in favor of acquittal. *See Williams*, 529 U.S. at 397 (prejudice assessment requires evaluation of "the totality of the available … evidence – both that adduced at trial, and the evidence adduced in the habeas proceeding"); *Porter*, 558 U.S. at 42 (holding that state court's failure to find penalty phase prejudice was unreasonable where post-conviction record showed simultaneous strengthening of mitigation and weakening of aggravation). That is more than enough to establish *Strickland* prejudice, and the Eleventh Circuit and the state court erred by employing an analysis that blinded each of them to the plain import of the facts in the record.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari.

Respectfully submitted,

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