No. 22-5452

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CAMERON PAUL CROCKETT,

Petitioner,

v.

HAROLD W. CLARKE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under AEDPA, state prisoners seeking federal habeas relief must demonstrate that the relevant state court's decision involved either an unreasonable application of federal law, *28 U.S.C. § 2254(d)(1)*, or an unreasonable determination of the facts in light of the evidence presented in the state court proceeding, *28 U.S.C. § 2254(d)(2)*. This case turns on the latter pathway to relief.

Since AEDPA's enactment, the circuits have toiled with the question of the extent to which the adequacy of the state court's fact-finding *process* bears on the reasonableness of its ultimate factual *determination* under (d)(2). No clear consensus has emerged from the cases that have endeavored to answer this question—only inconsistency from circuit to circuit and panel to panel. After now 26 years of AEDPA rule, the time has come for this Court to definitively settle the matter. The question presented here is as follows:

Does AEDPA's "unreasonable determination of the facts" clause contemplate that materially inadequate state court fact-finding processes can satisfy § 2254 (d)(2), or did the statute silently overrule decades of this Court's precedents requiring that the state's habeas proceedings be full and fair? And as it pertains to the prejudice prong of the petitioner's ineffective assistance of counsel claim, which Crockett based principally on the compelling and unrefuted affidavits of three independent experts, did the Fourth Circuit err when it upheld the state and

district courts' denial of habeas relief—decisions themselves premised on the supposed inconclusiveness of those expert affidavits—when no court to date has held even so much as an evidentiary hearing to allow for full factual development of the claim in the first place?

PARTIES TO THE PROCEEDING

Petitioner Cameron Paul Crockett was the plaintiff in the United States District Court for the Eastern District of Virginia and the plaintiff-appellant in the United States Court of Appeals for the Fourth Circuit. Petitioner wrote his Fourth Circuit COA petition *pro se*, and it was granted in part. The Fourth Circuit subsequently appointed the Georgetown University Appellate Legal Clinic to represent Mr. Crockett.

Respondent Harold W. Clarke, Director of the Virginia Department of Corrections, was the defendant in the United States District Court for the Eastern District of Virginia and the defendant-appellee in the United States Court of Appeals for the Fourth Circuit.

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The Fourth Circuit's decision is reported at 35 F.4d 231 (2022). The opinion and order of the United States District Court for the Eastern District of Virginia is unreported, *Crockett v. Clarke*, Civil Action No. 3:18CV139 (March 26, 2019). The Supreme Court of Virginia's decision is unreported, *Crockett v. Clarke*, Record No. 161572 (2017).

JURISDICTION

The Fourth Circuit, exercising its jurisdiction under 28 U.S.C. § 2253, entered judgment on May 24, 2022. This Court has jurisdiction under 28 U.S.C. § 1254.

RELEVANT CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VI and U.S. Const. amend. XIV together guarantee what petitioner has been denied to date: the right to effective counsel, and to due process of law in state court.

INTRODUCTION

The lower courts are presently divided on the question of whether a state court's unreasonable fact-finding *processes* affect the reasonableness of its *determinations* under 28 U.S.C. § 2254(d)(2), and if so, what the extent of the effect may be. The instant petition seeks to resolve that split.

We have all heard the ubiquitous refrain, "AEDPA deference." It is largely because of this "deference"—a word nowhere to be found in the statute—that "post-AEDPA federal habeas corpus practice is a blind killing ground, doctrinally and conceptually as well as literally." Hertz & Liebman, *Federal Habeas Corpus Practice and Procedure, Volume One*, Page viii. That is to say, this broad notion of "deference" to the state courts—rather than AEDPA's actual intent and language—has become the prevailing lens through which courts view § 2254 cases. The result has been to promote the misuse of AEDPA as almost some kind of invincibility cloak for challenged state-court decisions and encourage rule by hyperbole.

Or in the words of Judge Niemeyer of the Fourth Circuit in this case:

> "...The statute says that when the state court [makes a decision on the merits], *we're not allowed to review it.* Isn't that right? In the very first sentence it says once the state court makes that decision, that our courts are out of it... *with the exception that the state court went off its rocker*, off the tracks..." *Crockett v. Clarke*, No. 19-6636, Oral Arguments @ 11'30" (emphasis added).

Similarly, Judge Wilkinson stated his belief that it is "almost insulting" to suggest that the Supreme Court of Virginia could have made a decision poor enough to warrant relief, for it is a "very fine court" which, like the other state courts, "as a rule [doesn't] make irrational or unreasonable decisions." Oral Arguments @19'-19'20"; 23'8".

Of course, AEDPA's standards present a tough burden for the petitioner. The state court decision must be objectively unreasonable such that the alleged error is beyond fair-minded disagreement. *See, e.g., Shinn v. Ramirez,* 142 S.Ct. 1718, 1732 (2022). This Court, however, has roundly denounced exaggerated views of the rigidity of the AEDPA standard, stating, "Even in the context of federal habeas, *deference does not imply abandonment or abdication of judicial review.* Deference does not by definition preclude relief." *Miller-El v. Cockrell,* 537 U.S. 322, 340 (2003) (emphasis added).

Neither is this "deference" insurmountable or unconditional. Relevant here, "deference" is ceded under 28 U.S.C. §2254 (d)(2) if the state court unreasonably determines the facts of the case by depriving the petitioner of a full and fair hearing on his claim. *See Brumfield v. Cain,* 135 S.Ct. 2269, 2275-2281, 2283 (2015). Exceedingly prohibitive interpretations of AEDPA, like the one espoused by the Fourth Circuit, warrant correction because they present the frightening specter that by too heavily circumscribing federal review, meritorious constitutional claims

might *never* be afforded due process in *any* court. Indeed, it's already happened in this case.

The intent of AEDPA takes on special prominence as it related to the question presented. Congress specifically designed the statute to restrain the federal courts in the interests of comity, underscoring the role of the state courts as the primary triers of fact and guardians of constitutional rights. *See, e.g., Shinn*, 142 S.Ct. at 1731-32 (2022).

This rationale, however, is a coin with two sides. For whatever "deference" is afforded state-court decisions, it naturally comes from the expectation that those courts will faithfully execute their chief role on habeas and provide a full and fair proceeding before deciding whether a petitioner's constitutional rights have been violated. So, what happens under AEPDA when the state court shirks that duty? What happens when they refuse to permit factual development of a properly stated claim which, if proved true, would require relief? It follows logically that if the state court deprives a petitioner of due process on a meritorious claim, it has also *a fortiori* deprived itself of "deference" to its decision on federal review. After all, such has been the law of this Court since long before AEDPA's conception. *See, e.g., Townsend v. Sain*, 372 U.S. 293 (1963); *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992). If Congress had meant to erase this tradition when it wrote AEDPA, it would have done so.

AEDPA is not, and cannot be allowed to become, a rubber stamp that can be used to gloss over inadequate state court fact-finding processes—least of all in cases where no court has ever disputed that the petitioner's claim would warrant relief should his allegations hold up at a hearing. Yet federal courts are using AEDPA to blindly justify state-court decisions without even looking at the fairness of their procedures, and that is exactly what the Fourth Circuit did here even though the state's handling of the petition cried out for correction.

Following a fatal single-vehicle crash in 2008 that killed his best friend, Jack Korte, petitioner Cameron Crockett was convicted of DUI involuntary manslaughter in the Virginia Beach Circuit Court in 2012. Crockett has consistently maintained that he was not the driver at the time of the accident, but rather that another acquaintance, one Jacob Palmer[1], was.

What lies at the core of Crockett's habeas petition is the same thing he was wrongfully deprived of at trial: a scientific investigation by defense counsel into whether the driver's seat belt was worn during the collision[2]. This point was pivotal because a vast and uncontroverted body of evidence established that Crockett was *not* belted for the crash. Thus, proof of a belted driver would have thrown the prosecution's case into disarray. And as the post-conviction evidence now providing

[1] Palmer is awaiting trial in Georgia for multiple felony charges following a police chase where he assaulted officers, stole and crashed a squad car head-on into a civilian vehicle, and was shot by police before submitting. *State of Georgia v. Jacob Anthony Palmer*, SPCR21-02866-J6.

[2] The state court found counsel constitutionally deficient for neglecting this investigation, so only the prejudicial effect of his failure is at issue now. *See Crockett v. Clarke*, Record No. 161572, at *7 (Supreme Court of Virginia, 2017) (finding of deficiency).

this proof movingly illustrates—especially in conjunction with the trial record—it would have resulted in a reasonable probability of acquittal. *See Strickland v. Washington*, 466 U.S. 668 (1984).

The petitioner's thrust on certiorari is as follows: The Fourth Circuit erred by holding that the state court reasonably determined the facts of the case when, in fact, its opinion inexcusably ignored the highly probative proffered testimony of three experts speaking to the seat belt evidence—a distinguished mechanical engineer, another engineer with more than fifty years of accident reconstruction experience, and a retired lead police fatal accident investigator. Altogether, their testimony would have shown that the driver *was* belted and that Crockett *could not have been* the belted driver based on where he was found unconscious by the first person to respond to the crash. Evidence of such gravity cannot in fairness be totally overlooked by the state court, and the Fourth Circuit was obligated to find that Virginia *un*reasonably determined the facts surrounding the seat belt evidence by offering such a truncated and vacuous fact-finding process.

Perhaps nothing exemplifies just how unreasonably and unfairly Crockett's claim has been handled better than his own jurors' sworn declarations that evidence of a belted driver would have led to an acquittal. *See Wiggins v. Smith,* 539 U.S. 510, 537 (2003) (*Strickland*'s "prejudice prong" is satisfied if there is a reasonable probability that at least one juror would have voted differently). According to Donna Smitter's affidavit, one the jury's "biggest questions" was the seat belt, and

proof that it was in use during the collision "would have definitely changed the verdict." State Habeas Exhibit #418 (Appendix C) (emphasis in original). *See also* State Habeas Exhibits #419-21 (Appendices D-F).

Chafing against all principles of due process, the state court here offered perhaps the most fundamentally flawed fact-finding process imaginable. After denying Crockett the opportunity to bring his experts into court to elaborate on their affidavits and fully develop the record, it then turned a blind eye to almost all his pertinent post-conviction evidence and summarily denied habeas relief based on a single specious question about one of the expert affidavits that could have been easily resolved at a hearing.

In arriving at the conclusion that Crockett had not shown *Strickland* prejudice, the state court focused solely on the written report of Dr. David Pape, the expert who inspected the seat belt and ultimately found it was in use during the accident. *See Crockett v. Clarke*, No. 161572, at *7-8. This approach was patently unreasonable on account of how incredibly narrow it was.

Specifically, the court cherrypicked from the report to complain that Pape's report only "suggested" the driver was belted. But this finding excluded any analysis whatsoever of statements Pape made in the report supporting his high level of certainty regarding his conclusions. Meanwhile, the state court inexplicably disregarded other contemporaneous evidence outside of Pape's report persuasively demonstrating that he would have testified there is "absolutely no way" the driver

wasn't belted in this case. And perched at the height of unreasonableness, the state court also ignored the affidavits of Crockett's other two experts, both of whom opined under oath that he was not the belted driver in this case given the physics of the collision and where he was discovered in the wreckage.

Granted, state courts need not recite or rattle off every piece of evidence in a habeas petition for its decision to be reasonable. However, to completely ignore highly probative evidence that cuts right to the heart of the case is another thing altogether, and it fatally infects the reasonableness of the state court fact-finding process. When a state court "'has before it, yet apparently ignores, evidence that supports [the] petitioner's claim, the state court fact-finding process is defective," and the resulting fact findings are unreasonable. *Moore v. Hardee*, 723 F.3d 488, 499 ((4th Cir., 2013) (quoting *Taylor v. Maddox*, 366 F.3d 992, 1001 (9th Cir., 2004) (citing in turn *Miller-El v. Cockrell*, 537 U.S. 322 at 346 (2003)).

Little could fit the bill better than the evidence the Supreme Court of Virginia ignored in this case, which not only plausibly purported to establish a reasonable doubt, but strongly flirted with showing Crockett's innocence as well. Instead of deciding whether Crockett had established *Strickland* prejudice based solely on the written word of the Pape Report, the state court was obligated in fairness to consider other salient evidence in the record supporting the petitioner's claim. And if there were any questions remaining as to what exactly the expert

testimony would have been at trial, then due process compels that the state court afford a means by which to fully develop the facts—usually an evidentiary hearing.

A state court's refusal to afford a hearing on facts such as these *must* necessarily qualify an unreasonable fact-finding *process* so as to satisfy 28 U.S.C. § 2254(d)(2). There can be no reasonable determination without first a reasonable process, and the Court should recognize this caveat under AEDPA.

Although the Fourth Circuit on federal review repeatedly acknowledged in its opinion that reasonable jurists could have come to a different conclusion than the Virginia Supreme Court in this case, it clearly erred in its analysis when it denied habeas relief. Namely, the panel mistakenly believed that AEDPA required it, when faced with questions about the significance and full meaning of the petitioner's evidence, to simply apply "deference" to the state court's determinations and resolve those questions in its favor. The Fourth Circuit's view, however, utterly fails to consider whether the process informing those determinations was itself reasonable in light of the evidence presented in the state court. Because the reasonableness of a state court's fact-finding process surely bears on the reasonableness of its ultimate determinations under § 2254(d)(2), and because Virginia's fact-finding process was woefully inadequate in the petitioner's case, this Court should grant certiorari and reverse and remand for an evidentiary hearing on the seat belt claim.

STATEMENT OF THE CASE

On Sunday, December 28, 2008, best friends Cameron Crockett and Jack Korte arranged to meet their friend Jacob Palmer at the house party of another mutual friend, Josh Reddy. Fourth Circuit Joint Appendix (hereinafter "4JA") at 739-747. Crockett, Korte, and Palmer were all at the party together for a short time before Palmer asked Reddy if he wanted anything from the store. 4JA 670-71, 673. Right after this, all three men left the party. 4JA 673.

Some fifteen minutes later, at about 11:15 pm, Crockett's 1998 Honda Accord crashed into a tree on Wolfsnare Road, devastating the front-passenger side of the car but leaving the driver's side and the back seat intact. 4JA 409, 415, 419; 4JA 1344-69, 1539-40.

The first witness to respond to the crash was one Pamela Patrick, a neighbor from across the street. Very shortly after Patrick arrived, another neighbor, James Reid, also arrived on site. Although Patrick and Reid responded as quickly as they could, both had trouble locating the crash site at first given the setting: a heavily wooded and poorly lit residential road. 4JA 295, 309, 341-42. Both described Crockett as unconscious, "curved in the back seat," with "roughly about his whole body" in the back seat, and with his arm protruding from the rear windshield. 4JA 330, 345; 332, 337. When Patrick dialed 911 for help, she referred to Crockett as "the one in the back seat." 4JA 325-26. Neither Patrick, nor Reid, nor any other witness saw a seat belt on or around Crockett. 4JA 333, 350, 364, 394, 410-11.

Even though the airbags deployed and the driver's seat belt was in use, a police officer specially trained in identifying airbag and seat belt injuries found that Crockett sustained no such injuries. 4JA 493, 504. Police never tested the driver's side airbag for DNA despite its ready availability. 4JA 623-24.

After a "long" absence, Jacob Palmer returned to the house party later in the night. Ammerrell Barretto, another party attendee, testified that Palmer came back acting "really like weird and sketchy," "breathing kind of heavy," and asking about Crockett and Korte. 4JA 682-84.

Following two five-day trials[3] pitting the Commonwealth's theory that Crockett was the unbelted driver and thrown into the back seat by the force of the impact against the defense's theory that Jacob Palmer was belted in the driver's seat and Crockett was in the back seat to begin with, Crockett was convicted on March 1, 2012. Crockett obtained new counsel for the sentencing phase and filed a motion for a new trial based on the proffered seat belt examination testimony of Dr. David Pape. Dr. Pape's report, which ultimately concluded that "cupping" seen on the belt would not have been present unless the driver was belted during the collision, reads in pertinent part:

> "The seat belt latch and retractor functioned properly at the time of our inspection. There was no indication that any of the seat belt components malfunctioned during the collision.
>
> The primary direction of impact in this accident was in the lateral direction. The loading on the seat belt webbing would not be expected to be as severe as that found in a frontal collision. However, one section of the

[3] The first ended in a mistrial.

> seat belt webbing had cupping. This section of webbing was the section that would have been in the buckle area during use. This cupping was consistent with loading from occupant forces during the collision and suggested the seat belt was being worn by the driver at the time of the collision.
>
> If the seat belt was not in use during the collision one would not expect this cupping." State Habeas Exhibit #407 (Appendix G).

The Virginia Beach Circuit Court denied Crockett's motion for a new trial, finding that the seat belt evidence could have been discovered by trial counsel through the course of reasonable diligence. 4JA 1152, 1245.

On state habeas, Crockett claimed ineffective assistance of trial counsel and bolstered Pape's report with sentencing counsel's sworn representation of what Pape told her his testimony would be. In the words of Adrianne Bennett:

> "[Pape] will be able to state very emphatically and clearly that the cupping on the lap belt is consistent to a reasonable degree of engineering certainty that it was a significant collision that resulted in the cupping and that *there is absolutely no way that cupping would have occurred on that lap belt but for someone being belted in that seat belt at the time of the collision....*" (Appendix H) (emphasis added). *See also* Adrianne Bennett Habeas Affidavit (State Habeas Exhibit #410) (Appendix I) ("Dr. Pape verbally stated to me that the 'cupping' seen on the Honda Accord's driver side seat belt could only have occurred if the seat belt were worn during a high impact collision of such nature as to result in a total loss of the vehicle.") (emphasis in original).

In addition, Crockett attached to his state habeas petition an email from Dr. Pape himself confirming his that he was confident to a reasonable degree of engineering certainty that the driver was belted in this case. State Habeas Exhibit # 407 (Appendix G).

Crockett also submitted the affidavits of experts Ron Kirk and Robert F. Bagnell. The affidavit of Ron Kirk, standing on more than fifty years of accident reconstruction experience, reads in pertinent part:

> "I am confident, to a reasonable degree of engineering certainty, that *Mr. Crockett could not have been found where he was by the first witness to respond to the accident if he had been the belted driver.* Although this opinion appears self-evident, I believe I specifically expressed this opinion to Mr. Sacks [trial counsel]." State Habeas Exhibit # 412 (Appendix J) (emphasis added).

Similarly, former lead fatal accident investigator Robert Bagnell found Crockett's initial unconscious position "highly inconsistent" with having been the belted driver. State Habeas Exhibit # 415 (Appendix K).

To further demonstrate how prejudicial trial counsel's failure to investigate the seat belt evidence was, Crockett submitted the affidavits of jurors Donna Smitter and Barbara Addison. Both jurors swore that evidence of a belted driver would have changed their verdict. Smitter's affidavit is particularly instructive:

> "During deliberations, one of the biggest questions I had about the case involved the driver's seat belt. . . . I can say with confidence that [Crockett's expert evidence] would have definitely changed the verdict. . . . we were unanimous on at least one thing: that Cameron was *not* belted. Had we known the driver *was*, everyone would have been forced to conclude that Cameron *was not the driver.*" State Habeas Exhibit #418 (Appendix C (emphasis in original). *See also* State Habeas Exhibits #419-21 (Appendices D-F).

Despite the readiness and availability of these witnesses to testify, the state courts denied the habeas petition without an evidentiary hearing. At the crux of things here, the Supreme Court of Virginia in a mere four-sentence review found no

Strickland prejudice because the Pape report "only 'suggest[ed]' the driver's seat belt was in use at the time of the crash." *Crockett v. Clarke*, No. 161572, at *8 (Va. 2017).

The Fourth Circuit upheld the denial of habeas relief, ruling that it was reasonable for the state court to rely on the supposed inconclusiveness of the Pape Report. In the course of rejecting Crockett's appeal, however, the Fourth Circuit totally failed to recognize Crockett's argument that the state's inadequate fact-finding processes qualified as an "unreasonable determination of the facts in light of the evidence presented in the state court proceeding" so as to clear the AEDPA hurdle under 28 U.S.C. § 2254 (d)(2). Exacerbating this failure, the court went a step further as it conflated Crockett's (d)(2) unreasonable determination of fact arguments with his (d)(1) unreasonable application of law arguments, claiming they were actually one and the same under AEDPA. *Ibid.* And in much the same fashion as its state court brethren, the Fourth Circuit arrived at its conclusions whilst ignoring critical evidence and misstating other significant portions of the record.

Petitioner Cameron Crockett timely filed the instant prayer for certiorari on August 22, 2022.

REASONS FOR GRANTING THE WRIT

When a state habeas court encounters a claim whose supporting factual allegations are both credible and sufficient to warrant relief if true, it must abide by due process and allow for full and fair factual development of the claim prior to passing judgment. That has been the law of this Court for decades before AEDPA, and because AEDPA did nothing to overturn that tradition, it must still be the law of this Court today. Under the current statutory scheme of federal habeas, a state's unreasonable fact-finding process can and should amount to an "unreasonable determination of the facts" as identified by 28 U.S.C. § 2254(d)(2).

The petitioner's case presents a prime example. Yet the Fourth Circuit, floundering no less than its sister circuits without a directive from this Court, wrongfully deferred to the state court's determinations without any regard for whether the processes informing those determinations were themselves reasonable.

To confirm the continued importance of full and fair state fact-finding proceedings under AEDPA, and to prevent the great harm that could come to the integrity of our justice system from sanctioning federal deference to state-court decisions that were reached without due process, this Court should grant the writ and reverse and remand.

I. Notwithstanding Evident Confusion in the Lower Courts, Defective State-Court Fact-Finding Processes *Can* Lead to an "Unreasonable Determination of the Facts" Under 28 U.S.C. § 2254 (d)(2).

The Court has grappled with challenges to the adequacy of a state court's fact-finding process in various contexts before, but never squarely in this context, where the petitioner has specifically claimed that unreasonable state fact-finding *processes* qualify as an "unreasonable determination of the facts" under (d)(2). Nonetheless, the case law as a whole supports acknowledging this tenet of AEDPA review.

Taylor v. Maddox, 366 F.3d 992 (9th Cir., 2004), a case presenting numerous questions about (d)(2)'s interpretation, is widely considered the leading authority on the meaning of (d)(2) and how exactly it can be satisfied[4]. In *Taylor*, the court considered the adequacy of the state's fact-finding processes critical to any assessment of the reasonableness of its decision under (d)(2). *See Taylor*, at 999-1001. Moreover, in discussing the several ways a state-court "fact-finding process itself [may be] defective," *Taylor* found specifically that "mak[ing] evidentiary findings without holding a hearing and giving petitioner an opportunity to present evidence" would "clearly result in an unreasonable determination of the facts." *Id.*, at 1001.

[4] *See* Hertz & Liebman, *Federal Habeas Corpus Practice and Procedure*, § 20[c]; *see also* Brian R. Means, *Federal Habeas Manual* (2016), § 3:83-85.

Same too of state court decisions that would ignore evidence "highly probative and central" to the petitioner's claim. *Id.* Naturally, a rational fact-finder might discount such evidence or even find it incredible, "but no rational fact-finder would simply ignore it." *Id.*, at 1006. "[A]s the Supreme Court noted in *Miller-El*, the state court fact-finding process is undermined where the state has before it, yet apparently ignores, evidence that supports petitioner's claim." *Id.* (citing *Miller-El v. Cockrell*, 537 U.S. 322, 346 (2003). According to *Taylor*, (d)(2)'s "unreasonable determination of the facts" clause is satisfied when state courts ignore evidence "sufficient to support petitioner's claim when considered in the context of the full record bearing on the issue presented in the petition." *Id.*

Since *Taylor*, the Ninth Circuit has frequently applied its principles of (d)(2) review, consistently finding that unreasonable fact-finding processes meet the requirements for relief set out by AEDPA. *See, e.g., Jones v. Ryan*, 1 F.4th 1179, 1193 (9th Cir., 2021). Several of the other circuits—including the Fourth—have also signaled their agreement with this view, citing *Taylor* in support. *See, e.g.*[5], *Gray v. Zook*, 806 F.3d 783, 791 (4th Cir., 2015) ("When a state court apparently ignores a petitioner's properly presented evidence, its fact-finding process may lead to unreasonable determinations of fact under § 2254(d)(2)."); *Smith v. Aldridge*, 904 F.3d 874, 882-83 (10th Cir., 2018) ("We consequently have little trouble concluding

[5] Prior to *Taylor*, several of the circuits foreshadowed its thinking in appearing supportive of a (d)(2) process argument. *See Drake v. Portuondo*, 321 F.3d 338, 345 (2nd Cir., 2003); *Lambert v. Blackwell*, 387 F.3d 210, 239 (3rd Cir., 2004); *Bryan v. Mullin*, 335 F.3d 1207, 1215 (10th Cir., 2003) (en banc).

the procedures a state court employs to make factual determinations — here, deciding whether to order an evidentiary hearing — can affect the reasonableness of the court's subsequent factual determinations. And sometimes, declining to hold an evidentiary hearing may so affect, and indeed infect, a state court's fact-finding process that it renders the court's factual determinations unreasonable.")

However, as courts have noted, the case law remains divided on how to treat unreasonable state fact-finding processes under (d)(2), with some courts questioning or rejecting their relevance to AEDPA "deference." *See, e.g., Landers v. Warden*, 776 F.3d 1288, 1298-99 (11th Cir., 2015) (noting "the apparent disagreement among our sister circuits on the extent to which § 2254(d)'s deference is conditioned, if at all, on the state court's fact-finding procedures"); *see also, e.g., Robidoux v. O'Brien*, 643 F.3d 334, 340 & FN 5 (1st Cir., 2011) (observing the same split) *and Hill v. Shoop*, 11 F.4th 373, 418 (6th Cir., 2021) (dissenting opinion recognizing *Taylor* while the panel majority did not).

And as the Fourth Circuit showed in this case, because this area of law remains underdeveloped, even those courts that appear to agree with *Taylor* can't seem to apply its principles consistently. For example, just two months after its decision in Crockett's case, a different panel of the Fourth Circuit expressly found that the state court's failure to consider significant evidence in support of the petition amounted to an unreasonable determination of the facts. *See Allen v. Stephan*, No. 20-6 at *49 (July 26, 2022). Amplifying the concerns engendered by

such inconsistency, these two opposite decisions were reached despite remarkable similarity between the evidence ignored by the state courts in either case. *See Allen*, at * 49 ("the sentencing judge considered Allen's disputed schizophrenia diagnosis only and paid no mind to several uncontroverted mitigators... [and] the PCR court failed to even consider the most probative piece of evidence [identified by the petitioner in support of his claim").

In view of such confusion below, the issue of whether inadequate state-court processes bear on the reasonableness of its determinations is ripe for this Court to decide.

This Court should acknowledge a (d)(2) *process* argument because it would be consistent with its own precedents, both before and after AEDPA. Furthermore, *Taylor* and its progeny simply seem to have it right as a matter of common sense. While still acknowledging the strictures of AEDPA, *Taylor* clearly represents the sensible posture that state court decisions reached without due process rightfully jeopardize their reasonableness.

Prior to AEDPA, the federal habeas corpus statute had codified the requirements for relief as set out in *Townsend v. Sain*, 372 U.S. 293 (1963). In *Townsend*, this Court held that federal habeas courts retained the providence—and indeed, the obligation—to hold an evidentiary hearing on factual allegations left undeveloped by the state courts provided that those allegations would support relief if proved true. *Townsend*, at 311-13. While the case at hand in *Townsend* obviously

does not meet this one on all fours, the Court's observations and findings regarding the long-held tradition of requiring full and fair state court habeas proceedings remain instructive.

Most importantly, this Court stood behind the proposition that "a federal evidentiary hearing is required unless the state court trier of fact has, after a full hearing, reliably found the relevant facts." *Id.*, at 312-13; *see also Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992) ("the state must afford the petitioner a full and fair hearing on his federal claim"). This proposition substantially mirrors the one submitted by *Taylor* and by Crockett here: that unreasonable state fact-finding procedures in the face of a viable constitutional claim empower federal habeas courts to question the reasonableness of the state's decision.

AEDPA may have re-codified the habeas corpus statute, but it did not overrule the federal requirement for full and fair hearings at the state court level. Rather, as the petitioner contends, (d)(2)'s "unreasonable determination of the facts" clause merely subsumed it. In other words, the "full and fair hearing" requirement didn't go anywhere; the only difference is now, that requirement is part and parcel of the (d)(2) inquiry.

Perhaps the most essential common thread between pre- and post-AEDPA habeas corpus law in support of this view is the universal recognition that federal "deference" to state habeas decisions—regardless of the moniker assigned to it or the precise shape it takes under the law—is predicated upon the states fulfilling

their role as the primary and preferred venue for the vindication of constitutional rights. *Compare, e.g., Keeney*, at 9-10 (underscoring the importance of "full factual development in state court of a claim" to the federal habeas scheme) *with, e.g., Shinn v. Ramirez*, 142 S.Ct. at 1731-32 (2022) (same). It only makes sense that if the state courts neglect their duty to safeguard the rights of its citizens by failing to offer a reasonable factual determination process, then federal courts still have the power and duty to intervene. This principle of habeas review survives and transcends the changes made by AEDPA, and it applies in equal force today even if it takes a slightly different form than it used to.

Further support for this concept is found in several of the Court's post-AEDPA cases, notwithstanding their not having squared directly with the question presented here. For example, the Court in *District Attorney v. Osborne*, 129 S.Ct. 2308, 2319-20 (2009) held in the context of a 42 U.S.C. § 1983 claim by a state prisoner that federal courts have the power to "upset a state's post-conviction relief procedures" if "they are fundamentally inadequate to vindicate the substantive rights provided." Additionally, in reversing the Fifth Circuit's denial of a COA on habeas in *Miller-El v. Cockrell*, 537 U.S. at 346, the Court questioned the state court's fact-finding process on the grounds that it "had before it, and apparently ignored, testimony" supporting the petitioner's claim. And in *Brumfield v. Cain*, 135 S.Ct. 2269, 2277 (2015), the Court granted a petitioner's (d)(2) claim and found an unreasonable determination of the facts where the state court failed to hold a

hearing notwithstanding "sufficient evidence [in the record] to raise a question as to whether [petitioner could prove his claim]."

Set alongside the longstanding requirement for full and fair proceedings in the state habeas court as well as the proliferation of *Taylor*'s view of (d)(2), these recent precedents suggest the Court's continued desire to honor that requirement even under AEDPA. In the end, *not* recognizing such a requirement would force the federal courts to "defer" to intrinsically flawed state court decisions without even so much as the ability to flesh out yet-unresolved, disputed questions of fact. This simply cannot be AEDPA's intent.

II. The Fourth Circuit Erred by Failing to Recognize the Cognizability of Crockett's (d)(2) Fact-Finding Process Argument and by Mistakenly Stretching "AEDPA Deference" into a Panacea for State-Court Decisions Rendered Without Due Process.

Steered astray by its unduly aggrandized view of "AEDPA deference," the Fourth Circuit refused to recognize the relevance of the state court's fact-finding procedures to (d)(2) review. Compounding that error, the court conflated Crockett's unreasonable fact-finding process arguments under (d)(2) with his arguments under 28 U.S.C. § 2554 (d)(1) that the state court unreasonably applied *Strickland* law to the facts of his case, calling them "essentially the same argument." Whereas the Fourth Circuit should have asked whether it was reasonable for Virginia to rely on one word in Dr. Pape's written report to the exclusion of a roster of material

evidence supporting Crockett's claim, the panel's opinion dodges that question and repeats the same kind of errors that plague the state's decision.

The entirety of the Fourth Circuit's opinion as to Crockett's (d)(2) argument reads as follows:

> "Crockett also maintains that the Supreme Court of Virginia's *Strickland* prejudice analysis, in particular the court's discussion of the Pape Report, rested on an "unreasonable determination of the facts in light of the evidence" under 28 U.S.C. § 2254(d)(2). Crockett argues that the court improperly discounted the report by focusing on the term "suggested" when referring to the use of the driver's seatbelt at the time of the collision. *See* J.A. 1858 (quoting J.A. 1607).
>
> Even though Crockett frames his argument differently, this is essentially the same argument he made under § 2254(d)(1). So, we need not repeat that analysis. The Supreme Court of Virginia did not discount or mischaracterize the report. It simply did not find it persuasive in light of all of the other evidence. For basically the same reasons discussed above, Crockett failed to meet his burden under § 2254(d)(2)." *Crockett v. Clarke*, 35 F.4th 231, 244.

As a preliminary matter, the Fourth Circuit ran afoul of the statute by trying to compartmentalize Crockett's (d)(2) arguments within his distinctly different (d)(1) arguments. Although this Court has indicated that the modifier, "unreasonable," means the same thing in the (d)(1) context that it does in the (d)(2) context, *see Wood v. Allen*, 558 130 S.Ct. 841, 849 (2010), these two subsections of AEDPA are *not* one and the same. To be sure, there is a relationship that exists between (d)(1) and (d)(2). *See* Hertz & Liebman, *Federal Habeas Corpus Practice and Procedure,* § 3:66 (citing cases and discussing how a court's unreasonable fact-finding under (d)(2) can poison its application of the law to the facts under (d)(1)).

But Congress wrote them as independent subsections for a reason: either one standing alone can satisfy AEDPA. Necessarily, then, they cannot stand for the same kind of arguments as the Fourth Circuit seemed to believe.

As if merging (d)(1) with (d)(2) were not reason enough to find that the Fourth Circuit failed to recognize Crockett's unreasonable fact-finding process under (d)(2), the rest of its opinion makes it abundantly clear that the court never considered whether the state court's habeas procedures were full and fair.

Nowhere in its twenty-one-page opinion did the court even so much as mention the state court's fact-finding process, let alone discuss whether it was adequate for the ascertainment of truth. The word "process" only appears once in the opinion, and certainly not in the (d)(2) context. Other buzzwords like "fact-finding," "full and fair," and "due process" make no appearance at all. In short, the Fourth Circuit completely missed Crockett's point and performed no review of the state's factual determination process.

This is especially evident in its perfunctory ruling on the (d)(2) challenge. Just like the state court did, the Fourth Circuit focused *only* on the Pape report. Such is expressly clear in the plain text of its ruling. *See Crockett v. Clarke*, 35 F.4th at 244 ("Crockett argues that the court improperly discounted the *report*... The Supreme Court of Virginia did not discount or mischaracterize the *report*...") (emphasis added).

Again, Crockett's claim has never been that Pape's *report*, standing alone, would produce a different result at trial. It has always been that Pape's proffered *testimony* would. Yet the Fourth Circuit never addressed what Crockett's factual allegation was as to the substance of this testimony. It never discussed Adrianne Bennett's proffer to the sentencing court, made while Pape was right there in the courtroom and prepared to testify, that Pape would testify to a reasonable degree of engineering certainty that the driver was belted at the time of the crash. It never discussed where in that same proffer Bennett alleged Pape would say there is "absolutely no way" the driver wasn't belted in this case. It never discussed her state habeas affidavit wherein she reaffirmed her proffer under oath. And it never discussed Dr. Pape's own email agreeing with Bennett's characterization of his testimony.

In view of what was missing from the Fourth Circuit's (d)(2) analysis, the court cannot possibly have weighed whether Crockett received a full and fair hearing in state court. Crockett specifically argued that the state court acted unreasonably for ignoring all the evidence speaking to how Pape would actually testify and deciding the case instead on one word in his report. Without considering or developing the facts informing what the *jury* would have heard from Pape—clearly, trial counsel could not and would not submit the report into evidence without calling Pape to the stand—it is impossible to reasonably determine what effect those facts might have had on the verdict. Thus, just like the state court decision was unreasonable by virtue of its deficient fact-finding process, the Fourth

Circuit erred on AEDPA review when it failed to acknowledge the significance of that process and overlooked all the evidence demonstrating its inadequacy.

The Fourth Circuit's missteps, however, do not end there. The court also failed to engage with the proffered testimony of Ron Kirk, which is perhaps even more incredible than its other omissions given the substance of what Kirk had to say. Any reasonable federal jurist reviewing the fairness of a state court's fact-finding procedures under (d)(2) would surely have strongly questioned what justified ignoring proffered testimony from a fifty-year expert finding that Crockett "could not have been the belted driver." There is no valid reason to not even meaningfully discuss such potent factual allegations. Rather, the only explanation for it is that the Fourth Circuit simply never assessed the reasonableness of Virginia's fact-finding process.

Further corroborating that the Fourth Circuit conducted no review of how the state court arrived at its factual determinations, at one point it recited several "questions" posed by the Pape report that were already definitively answered by the record in Crockett's favor. Most importantly, the judges wondered whether the "cupping" on the seat belt cited by Pape as evidence of a belted driver might have occurred in some other prior accident. *See Crockett v. Clarke*, 35 F.4th at 243 n.* 5. But here, Adrianne Bennett's post-conviction affidavit established unequivocally that the "cupping" could *only* have occurred in *this* collision. *See* Appendix I. It stands to reason that if the Fourth Circuit couldn't be bothered to read some of

Crockett's most brightly highlighted evidence or get the salient facts straight, it certainly was in no position to assess whether it was reasonable for the state court to ignore those facts.

The Fourth Circuit's obvious failure to examine whether the state's factual determination process was reasonable leaps from the pages of its opinion. To make matters worse, by ignoring or misapprehending all of Crockett's most powerful evidence in support of his claim, the panel repeated the same fundamental mistake it was asked to review. Its decision therefore is clearly in error.

Considering that the Fourth Circuit demonstrably looked no further than the Pape report in its opinion, its repeated acknowledgment that some, but not all, reasonable jurists could have found *Strickland* prejudice takes on a special, unexpected significance. *See Crockett v. Clarke*, 35 F.4th at 235, 243 ("arguably, reasonable jurists could have agreed with Crockett.") That is, while the Fourth Circuit made that recognition to explain why the claim couldn't prevail under AEDPA, it now stands as a reason why it must. For if the panel thought that some reasonable jurists could have found *Strickland* prejudice *strictly on the Pape report*, then of course all reasonable jurists would have at least weighed and developed the rest of the seat belt evidence before denying relief.

The Fourth Circuit's opinion is predicated on the dangerously defective view that AEDPA requires it to resolve *all* questions and disputes about the state court opinion in its favor. But this is too great a stretch. AEDPA was never meant to

spellbind the federal courts into immutable deference for state-court decisions. *See Williams v. Taylor*, 529 U.S. 362, 375-79 (2000). Rather, "[i]f Congress had intended to require such an important change [in the federal habeas corpus scheme]... it would have spoken with much greater clarity than is found in the text of AEDPA." *Id.*, at 379. There is no more necessary or appropriate time for a federal court to act on habeas than when the state court has deprived the petitioner of a fair hearing on a meritorious, well-supported, and uncontroverted claim. Because that is the case here, and because the state court's unreasonable fact-finding process unravels the "deference" it would otherwise be owed under 28 U.S.C. §2254(d)(2), the panel's denial of relief requires reversal.

III. The State Court's Unreasonable Fact-Finding Process as to Crockett's *Strickland* Claim Led to an "Unreasonable Determination of the Facts" so as to Satisfy (d)(2)

The Supreme Court of Virginia's decision in *Crockett v. Clarke* stands at the pinnacle of unfairness. After denying the petitioner a chance to develop his claim, it then rejected the claim based on the supposed inconclusiveness of the facts supporting it, relying on a single word for that conclusion.

At bottom, the state court based its *Strickland* prejudice decision on its belief that Dr. Pape's report merely "suggest[ed]" the driver was belted for the crash. *Crockett v. Clarke*, No. 161572 at 7-8. It completely ignored *all* other evidence in the habeas record speaking to what Dr. Pape would actually testify to at trial, and it

completely ignored the affidavits of Crockett's jurors, Adrianne Bennett, Ron Kirk, and Robert Bagnell. Given the weight of the ignored evidence, the state court's fact-finding process was objectively unreasonable. Had the Fourth Circuit fulfilled its obligation to review the fairness of the state court's procedures, it would have arrived at the same conclusion.

The entirety of the state court's opinion regarding the prejudice prong of Crockett's *Strickland* claim reads as follows:

> "Notwithstanding counsel's deficient representation, the Court holds Crockett has failed to establish prejudice under Strickland. Crockett relies on the report of David A. Pape, Ph.D., an expert engineer retained post-trial by Crockett's sentencing counsel to support his motion for a new trial. Dr. Pape's report however only "suggest[ed]" the driver's seatbelt was in use at the time of the crash based on "cupping" on the belt. Thus, based on this report, it cannot be said there is a reasonable probability that the result of the proceeding would have been different had this evidence been obtained and admitted before the jury." *Crockett v. Clarke*, No. 161572 at 7-8.

First, Dr. Pape's report, cited *supra* at __, does not merely "suggest" the driver's seat belt was in use "based on 'cupping' on the belt." If one would just read on to the very next (and final) sentence in Pape's report, it says, "[i]f the seat belt was not in use during the collision one would not expect this cupping." Appendix G. Ergo, the "cupping" witnessed by Pape would only be there if the driver was belted.

If nothing else, this much stronger statement immediately following the "suggests" statement would compel any fairminded jurist to grant an evidentiary hearing where Pape could testify as he would at trial and be asked to clarify exactly

what he meant by his report. Even if for the sake of argument it was reasonable for the Supreme Court of Virginia to focus solely on Dr. Pape's report, it was still clearly *un*reasonable to so selectively dismiss the report in the face of two critical potentially conflicting statements and deny the petition without hearing Pape testify to explain himself.

Perhaps even more unreasonable yet was how the state court ignored the petitioner's evidence outside of the Pape report. Critically, as it pertains to what Crockett claimed Pape's testimony would be, he cited Adrianne Bennett's sworn representation of her conversations with him when she retained him to examine the seat belt. That is, Pape would tell the jury that "there is absolutely no way that cupping would have occurred on that lap belt but for someone being belted in that seat belt at the time of the collision." *See* pages __, *supra.* Yet despite this being the most reliable and contemporaneous characterization of what Pape's testimony would have been, the state court acted as if it did not exist.

In similarly cavalier fashion, the state court also completely overlooked the Ron Kirk and Robert Bagnell affidavits. It was especially unreasonable to ignore the Kirk affidavit. Kirk swore under oath that Crockett could not have been found where he was by the first person to respond to the accident if he were the belted driver. *See* page 12, *supra.* Kirk's proffered testimony, paired with that of Dr. Pape, would provide more than enough reasonable doubt for any jury trying this case. It would be one thing if the state court had meaningfully considered Kirk's

affidavit and resolved any questions surrounding it with a hearing, but here it never even so much as acknowledged that his affidavit was submitted. By denying habeas relief without developing the extremely promising testimony of Ron Kirk, the state court deprived itself of the chance to make a fully informed and intelligent decision on Crockett's claim. Such cannot be a result worthy of deference.

In view of both the quantity and quality of the evidence omitted by the Supreme Court of Virginia, there simply is no way the state court could have provided a full and fair fact-finding process here before arriving at its decision. And there is certainly nothing reasonable about a determination that not only fails to develop disputed facts, but also ignores the petitioner's best evidence in the process. No fair-minded jurist would have decided Crockett's petition this way.

To date, no court has ever answered the dispositive question on petitioner's *Strickland* claim: if Pape and Kirk were to testify as Crockett credibly claimed, would their findings be sufficient to engender a reasonable probability of a different result at trial? It's easy to see how they could. No doubt, their proffered testimony comprised evidence "highly probative and central" to the petitioner's claim, and thus the state court's refusal to engage with it at all renders its fact-finding process terminally defective and qualifies its decision an "unreasonable determination of the facts in light of the evidence presented in state court."

This is not a case, like in *Gray v. Zook*, 806 F.3d at 792 (4th Cir., 2015), where the parties traded five briefs on the issue in state court before the court reasonably

determined the petitioner's evidence was sufficiently insignificant to warrant not discussing it further in its final decision. Rather, like in *Taylor*, "the state court's failure to discuss [Crockett's ignored evidence] was inexplicable." *Gray*, at 792. That evidence was absolutely determinative of the claim and it was more than enough, if true, to stake a right to relief. Consequently, the state court operated entirely outside the realm of reason when it denied the petition without either considering this evidence or holding a hearing to resolve whatever questions there may have been about it. Its sorely deficient fact-finding processes must therefore operate to strip it of "AEDPA deference" on federal review.

CONCLUSION

Petitioner Cameron Crockett has *never* been afforded a full and fair hearing in seven years of litigating his *Strickland* claim. This striking dearth of due process has come at great cost to Crockett, who not only served eight years in prison but also to this day still wears the misplaced albatross of responsibility for his best friend's tragic death. Should this Court not intervene to correct the Fourth Circuit's error, many more meritorious habeas claims not fairly adjudicated in state court will risk being doomed by an unjustly inflated view of AEDPA. The petitioner therefore prays that the Court grant certiorari, reverse, and remand.