

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2023

DAVID JOSEPH MEISTER,
Petitioner,

v.

TYRELL DAVIS,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

David Meister, an Idaho prisoner, is serving two concurrent sentences of life in prison without the possibility of parole for the murder of Tonya Hart. Mr. Meister was 18 years old when he became a suspect in Hart's murder. Under heavy police questioning, he confessed to killing Hart, but he later recanted and claimed that his confession was false. The trial court limited a defense expert's testimony that would have cast serious doubt on the reliability of the confession, curtailing Mr. Meister's right to present a complete defense. And his trial counsel failed to develop critical evidence that would have proven his alibi while also undermining the veracity of the confession.

Despite a long journey through the state and federal courts, these critical constitutional errors have never been developed and heard on their merits, much less corrected. Yet the Court of Appeals denied Mr. Meister even the opportunity to raise them in an appeal from the denial of his habeas corpus petition.

This petition raises the following question:

Whether the Court of Appeals egregiously misapplied this Court's standard for issuing a certificate of appealability in the face of a substantial showing of the denial of constitutional rights.

PARTIES TO THE PROCEEDING

The petitioner is David Joseph Meister.

The respondent is Tyrell Davis, the Warden of the Idaho State Correctional Institution.

STATEMENT OF RELATED PROCEEDINGS

State v. David Joseph Meister, Latah County, Idaho Criminal Case No. CR-2002-1534. Judgment entered on July 31, 2003.

State v. Meister, No. 35048, 220 P.3d 1055 (Idaho 2009) (judgment reversed).

State v. Meister, Latah County, Idaho Criminal Case No. CR-2002-1534. Judgment entered on February 28, 2012.

State v. Meister, No. 39807, 2014 WL 861717 (Idaho Ct. App. 2014)

Meister v. State, No. 44322, 2018 WL 6735140 (Idaho Ct. App. 2018)

David Meister v. Tyrell Davis, 1:19-cv-00173-DKG, United States District Court for the District of Idaho. Judgment entered on September 27, 2022.

David Meister v. Tyrell Davis, Appeal No. 22-35830 (9th Cir. 2023), order denying a certificate of appealability entered on August 7, 2023, and order denying a petition for rehearing entered on August 31, 2023.

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OPINIONS BELOW

The Court of Appeals' August 30, 2023 Order denying Mr. Meister's petition for rehearing en banc is in Appendix A.

The Court of Appeals' order denying Mr. Meister's request for a certificate of appealability is in Appendix B.

The District Court's Memorandum Decision and Order denying habeas relief is in Appendix C.

The District Court's Memorandum Decision and Order dismissing certain claims as procedurally defaulted is in Appendix D.

The Idaho Court of Appeals' unpublished opinion affirming the summary dismissal of post-conviction relief is in Appendix E.

The Idaho Court of Appeals' unpublished opinion affirming Mr. Meister's convictions and sentences after retrial is in Appendix F.

JURISDICTION

The Court of Appeals denied Mr. Meister's "Motion for Reconsideration En Banc" on August 30, 2023. App. 1a He has filed this petition within 90 days of that denial. *See* Rule 13-3. The Court has jurisdiction under 28 U.S.C. § 1257(a).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to the United States Constitution provides, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law ...”

* * *

Title 28 U.S.C. § 2254(d) provides:

(d) 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.

STATEMENT OF THE CASE

On December 11, 2001, Tonya Hart was shot to death in her trailer home in Moscow, Idaho. Eight months later, David Meister told the police that a co-worker at the pizza place where he worked, Jesse Linderman, had hired him to kill Hart, who was Linderman's fiancée. App. 5a-6a. Meister was charged with conspiracy to commit murder and first-degree murder. *Id.* Because the police had no evidence against Linderman beyond Meister's statement, he was never charged.

Meister soon recanted his confession and claimed that he was coerced to confess by the police. App. 6a. He contended that the police fed details of the crime to him and that other details he had picked up in the news and through community scuttlebutt. App. 8a. According to Meister, the police threatened him with the death penalty during the interrogation. *Id.* Certain key aspects of his confession did not match the physical evidence. *Id.*

After a first jury trial in 2003, Meister was convicted and sentenced to life. But the Idaho Supreme Court reversed his conviction, finding that the trial court had excluded evidence of a potential alternate perpetrator who had purportedly confessed while in the county jail to killing Hart. *State v. Meister*, 220 P.3d 1055, 1062 (Idaho 2009). There now was a second potential confession to the crime percolating in the case. *Id.*

In the second trial, the state court allowed Meister to present the testimony of Dr. Richard Ofshe, an expert in false confessions, to testify about aspects of what might cause one to falsely confess to a crime. App. 107a. The court, however, also

significantly restricted the scope of Ofshe's testimony. *Id.* Although it permitted him to testify about coercive police tactics generally, it prohibited him from linking those to the circumstances of the interrogation in Meister's case or from offering his opinion that Meister's confession was involuntary. App. 108a. Aside from the confession, the evidence against Meister was largely circumstantial, and the defense was able to introduce evidence of an alternate perpetrator's confession to another county jail inmate. App. 7a. Yet Meister was again convicted and sentenced to life in prison without parole. App. 106a.

At his second appeal, Meister's court-appointed attorney argued that the restriction on Dr. Ofshe's testimony violated Meister's right to present evidence in support of his theory of defense. App. 106a-108a. But appellate counsel inexplicably limited this argument solely to state evidentiary rules. *Id.* at 107a-108a. He did not mention the Sixth or Fourteenth Amendments, nor did he cite a case on point from this Court, *Crane v. Kentucky*, 476 U.S. 683, 691 (1986) (holding that "foreclosing petitioner's efforts to introduce testimony about the environment in which the police secured his confession" violated his constitutional right to present a complete defense.). *Id.*

The Idaho Court of Appeals assumed error in restricting Ofshe's testimony but found that it was harmless under state law evidentiary standards. App. 109a-110a. Unlike federal constitutional harmless error analysis, the state standard shifted the burden to Meister to prove that the error was prejudicial to him rather

than placing a burden on the State to prove that it was not. *Id.* According to the state appellate court, Meister could not meet that burden. *Id.*

He next filed a post-conviction petition in the state district court raising several claims of ineffective assistance of trial counsel that revolved around trial counsel making serious errors that deprived Meister of a reasonable opportunity to disprove his confession while also proving an alibi. App. 84a. Meister also alleged that his appellate attorney was ineffective in not arguing that the trial court's restrictions on Ofshe's testimony violated his federal constitutional right to present a complete defense. *Id.* at 86a-90a. The state court summarily dismissed all claims without an evidentiary hearing or factual development. *Id.* at 82a.

On appeal, the Idaho Court of Appeals affirmed the lower court's summary dismissal. App. 82a. In rejecting Meister's claims of ineffective assistance of trial counsel, the Idaho Court of Appeals concluded that Meister was second-guessing his trial counsel's tactical or strategic decisions. *Id.* at 91a-93a. In reaching that conclusion, it applied a long-standing and unusual interpretative gloss that Idaho appellate courts have placed on this Court's Sixth Amendment test from *Strickland v. Washington*, 466 U.S. 668 (1984). *Id.* at 92a. Under the Idaho rule, a petitioner cannot carry his burden to show ineffective assistance of counsel unless counsel's decisions "are based on inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation." *Id.* This additional burden on a petitioner is not found in *Strickland*.

Meister continued his journey through the courts by filing a petition for a writ of habeas corpus in the United States District Court for the District of Idaho. There, he raised these same Sixth and Fourteenth Amendment claims. The District Court summarily dismissed, as procedurally defaulted, Meister's claim that the trial court's restriction on Ofshe's testimony deprived him of his Sixth and Fourteenth Amendment right to present a complete defense. App. 70a. That was based on appellate counsel's odd failure to frame the issue as a federal claim on direct appeal. *Id.* The District Court turned aside Meister's argument that his appellate counsel's ineffectiveness was the cause for that default. *Id.* at 73a-78a. The District Court later concluded that Meister was not entitled to habeas relief on any of his claims of ineffective assistance of trial counsel under 28 U.S.C. § 2254(d). *Id.* at 4a-62a. It denied a certificate of appealability. *Id.* at 62a.

Still representing himself, Meister filed a notice of appeal and sought a certificate of appealability in the Court of Appeals. App. 2a. The Court of Appeals denied that request and then denied Meister's petition for rehearing. *Id.* at 1a.

REASON FOR GRANTING THE PETITION

The Court of Appeals egregiously misapplied this Court’s standard for issuing a certificate of appealability in the face of a substantial showing of the denial of constitutional rights.

Meister respectfully contends that this case is a rare candidate for granting the petition, vacating the judgment, and summarily reversing to the Court of Appeals because that Court’s denial of Meister’s motion for a COA was so contrary to this Court’s established legal standards as to warrant the correction of the error. Alternatively, this Court should grant the petition and allow full briefing and argument.

A. This Court’s well-established standard for granting a COA.

A habeas petitioner has no automatic right to appeal an adverse decision. The petitioner must first receive a certificate of appealability, which requires the petitioner to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

This is not an onerous standard. According to this Court, a petitioner need only “sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 481 (2000)). While “[t]he COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits,” it “does not

require a showing that the appeal will succeed.” *Miller-El*, 537 U.S. at 336. And “a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.” *Id.* at 338.

B. Petitioner made a substantial showing of the denial of his constitutional right to present a complete defense because the trial court excluded evidence that was material to proving a false confession.

A criminal defendant’s fundamental right to a meaningful opportunity to present a complete defense to a criminal accusation is deeply rooted in the Constitution. *See, e.g., Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (holding that state court rule that excluded trustworthy third-party confessions violated this fundamental right); *see also California v. Trombetta*, 467 U.S. 479, 485 (1984) (“We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense.”).

This Court has also recognized the central and powerful role that a defendant’s confession has in a criminal trial. The Court has acknowledged that a defendant’s confession is one of the most incriminating pieces of evidence that the prosecution can offer. *See Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (“[c]ertainly, confessions have a profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.”). And the Court has likewise concluded that “certain interrogation techniques, either in isolation, or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the

Due Process Clause of the Fourteenth Amendment.” *Miller v. Fenton*, 474 U.S. 104, 109 (1985).

Those strains of constitutional law merged in *Crane v. Kentucky*, 476 U.S. 683 (1986). There, the defendant challenged his confession on the ground that it was involuntary. *Id.* at 684. The trial court denied his pretrial motion to suppress, and when the defendant “sought to introduce testimony about the physical and psychological environment in which the confession was obtained,” the trial court granted the state’s motion to exclude the evidence altogether from the trial. *Id.* This Court ultimately held that the exclusion of testimony about the circumstances of the defendant’s confession deprived him of his fundamental constitutional right to a fair opportunity to present a defense. *Id.* at 691. According to the Court, “[t]hat opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant’s claim of innocence.” *Id.* The Court noted that “evidence about the manner in which a confession was obtained is often highly relevant to its reliability and credibility.” *Id.*

Meister’s case is eerily similar to *Crane*. As in that case, Meister wanted to introduce evidence “bearing on the credibility of [his] confession” that was “central to [his] claim of innocence.” *Crane*, 476 U.S. at 691. His defense was also similar to the defendant’s in *Crane* in that he argued that there was scant physical evidence “to link him to the crime and that, for a variety of reasons, his earlier admission of guilt was not to be believed.” *Id.* Also like *Crane*, Meister was young – recently

turned 19 years old – when he was interrogated. Though he was an adult, he was just barely so, and this Court has found that the “greatest care” must attend the review of confessions by young people to ensure that they are not “the product of ignorance of rights or of adolescent fantasy, fright or despair.” *See In re Gault*, 387 U.S. 1, 55 (1967).

Granted, there are a few distinctions between *Crane* and this case. Meister was permitted to introduce *some* evidence regarding the circumstances of his confession and to argue that it lacked credibility. But those distinctions are not material. Meister was not permitted to offer the most potent evidence that he could: his expert’s review of the specific circumstances in which his statements were made and that expert’s opinion that those circumstances likely rendered Meister’s confession coerced and false. That evidence would have been at the core of Meister’s defense. Its exclusion violated his right to present evidence in support of his theory of defense under the Sixth and Fourteenth Amendments.

In short, Meister made a strong showing that he was deprived of a constitutional trial right.

And the District Court’s resolution of his constitutional claim was more than “reasonably debatable.” The District Court determined that the federal claim was procedurally barred because Meister’s appointed counsel failed to raise it as a federal constitutional claim during Meister’s direct appeal. Yet Meister had a ready explanation for that – his appointed counsel was himself constitutionally deficient during the direct appeal for not arguing *Crane*.

This Court has held that ineffective assistance of counsel in a proceeding at which a petitioner had the right to the effective assistance of counsel can be “cause” for the default of another constitutional claim, as long as the ineffectiveness claim is itself properly exhausted. *Edwards v. Carpenter*, 529 U.S. 446, 453 (2000). Meister had a due process right to the effective assistance of counsel on his direct appeal, *see Evitts v. Lucey*, 469 U.S. 387, 395–396 (1985), and he exhausted this ineffective assistance of appellate counsel claim in the state courts.

Meister’s argument that his appellate counsel was ineffective is straightforward and compelling on its face. His counsel saw fit to argue that the trial court erred in restricting Ofshe’s testimony. Counsel was aware that this restriction impacted Meister’s ability to present evidence in support of his defense theory. The *Crane* argument relies on exactly the same set of facts and the same basic claim of error. All appellate counsel needed to do was cite that case or even mention the Sixth and Fourteenth Amendments. It would not have detracted from the argument that counsel made. In fact, it could have been in the same section of the appellate brief and taken no more than a few more sentences. Counsel’s failure to include this federal issue is a clear and obvious error that significantly prejudiced Meister.

Addressing Meister’s claim that the cause for this default was his appellate counsel’s ineffectiveness, the District Court concluded that “the argument raised by direct appeal counsel – that the trial court’s limitation of Dr. Ofshe’s testimony was inconsistent with the Idaho Rules of Evidence – was stronger than Petitioner’s

federal constitutional claims based on that limitation.” App. 78a. That ruling makes little sense, given that (1) *Crane* is on point for Meister’s argument and it would have taken little effort for appellate counsel to simply cite that case and the Sixth and Fourteenth Amendments for what was a very similar argument under state and federal law; and that (2) the state law evidentiary error was subject to a burden-shifting harmless error analysis that was much more difficult to establish for relief than the federal constitutional harmless error analysis. *See Chapman v. California*, 286 U.S. 18, 24 (1967) (holding “that before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt.”). Along the way, the District Court was simply wrong in finding that “it is easier [for appellate counsel] to show an evidentiary error than a federal constitutional violation.” App. at 78a. For support, it cited an inapposite case in which a defendant claimed that the *admission* of certain evidence prejudiced his right to a fair trial rather than the *exclusion* of evidence that violated the defendant’s right to present a complete defense. *See id.* (citing *Jammal v. Van de Kamp*, 926 F.2d 918, 920 (9th Cir. 1991).

The issue was obvious from the record, it was strong, and had appellate counsel raised it there is a reasonable probability that the Idaho appellate court would have reversed Meister’s conviction.

Meister respectfully contends that the Ninth Circuit’s denial of a COA on this constitutional claim went so far beyond the standards set by this Court in *Miller-El* that the Court should summarily reverse and allow Meister to proceed with his

appeal below. Should the Court disagree for any reason, he alternatively asks that it grant the petition and set briefing and argument.

C. Petitioner made a substantial showing of the denial of his constitutional right to the effective assistance of counsel because his counsel failed to present available evidence that was material to proving his alibi.

Meister had a constitutional right under the Sixth and Fourteenth Amendments to the effective assistance of trial counsel. *Gideon v. Wainwright*, 372 U.S. 335 (1963). This Court long ago established the elements of a successful ineffective assistance of counsel claim in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a court must first determine whether counsel's representation “fell below an objective standard of reasonableness.” 466 U.S., at 688. Then the court must ask whether “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.*, at 694.

Although Meister provided several examples of what he believed to be ineffective assistance of counsel, perhaps the most notable for present purposes was his trial counsel's failure to develop evidence that would have supported his alibi. This evidence would have served double duty as undermining the believability of his “confession” while giving the jury a strong and independent reason to acquit.

Tonya Hart was killed around 10:15 p.m. on December 11, 2001. App. 30a. Meister testified at his trial that he was home with his roommate, Jeremy White, on that date and at that time. *Id.* at 30a-31a. His defense counsel offered *some* third-party evidence of Meister's alibi, endeavoring to show that he was somewhere else

either during the time of the murder or so soon thereafter that it would be near impossible for him to have covered the distance. Meister's roommate, White, testified that Meister was at home with him that night somewhere between 9:30 p.m. and 10:00 p.m. or 10:30 p.m. *Id.* If credited, Meister could not have been at Hart's trailer at 10:15 p.m.

White also testified that sometime before 11:00 p.m., he and Meister called the Pizza Pipeline to order a pizza, but they did not get an answer. *Id.* This was noteworthy because it was too early for the Pipeline to be closed. According to White, he and Meister decided to drive to Pizza Pipeline, saw that it was indeed closed early, and then went to Papa John's to pick up a pizza. *Id.* White's testimony generally supported Meister's claim that he could not have been at Hart's trailer around 10:15 p.m. But his memory was vague on some particulars.

Two other witnesses also corroborated some of Meister's timeline. App. 31a. One testified that she had arrived at Meister and White's house between 10:30 p.m. and 11:00 p.m. and she saw that they had just finished eating pizza. *Id.* This lent some support to the idea that Meister had already gone out in search of pizza and returned home well before 11:00 p.m.

Another witness testified that she called the Pizza Pipeline expecting it to be open and no one answered the phone, confirming that it was closed that night when Meister and White called and went there. *Id.* This also more or less lined up with Meister's claim that the pizza place had closed.

But there were weaknesses and uncertainties in each of these witnesses' testimonies. Ultimately, the State was able to poke holes in the witnesses' memories and argue to the jury that Meister could have killed Hart and still made it home around 11:00 p.m.

Meister's alibi sorely needed support, and such evidence was available from two additional witnesses and a Sheriff's Office call log. This evidence was critical to establishing the events at the Pizza Pipeline that night and the timing of the closing of the store, which would have confirmed Meister's alibi. Defense counsel inexplicably failed to use it.

One potential witness, Joe Rauch, was a Pizza Pipeline employee working on the night of December 11. He was expected to testify that he spoke with Meister, whom he knew, in the Papa John's parking lot before returning to the Pipeline right before 10:50 p.m. on orders of the district manager. App. 32a.

Another Pipeline employee Rijel Glasebrook was also working on December 11. She could have confirmed that they temporarily closed early that night and stopped answering phones before 11:00 p.m. *Id.* She could have also corroborated Joe Rauch's presence back at the store before 11:00 p.m. and that they started answering phones again at that time. *Id.* Between Rauch and Glasebrook, who were disinterested witnesses, the defense could have proven that Meister was home before 11:00 p.m. after going in search of pizza with his roommate.

Physical evidence also supported Meister's timeline. In discovery, the defense had received a call log from the Sheriff's Office logging a call from a dispatcher to the Pipeline at 10:59 p.m., which Joe Rauch answered.

This impartial, third-party evidence would have pushed the timeline considerably in Meister's favor, placing him away from his house in search of pizza with White well before 11:00 p.m. and therefore not leaving enough time for him to have committed the murder and returned home.

The state court rejected Meister's claim that his trial counsel were ineffective in not using this compelling alibi evidence at the second trial. App. 92a. The state court concluded, without allowing evidentiary development on this point, that trial counsel had made a tactical decision not to call the alibi witnesses. *Id.* In doing so, the state court applied an interpretation of *Strickland* that an attorney's tactical or strategic decisions are unassailable unless they "are based on inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation." *Id.*

These conclusions are squarely at odds with the record. Although *Strickland* does speak to viewing counsel's strategic calls without the "distorting lens of hindsight," *see Strickland*, 466 U.S. at 689, in all circumstances courts must review the evidence and record to determine whether counsel's decisions are "objectively reasonable." Decisions may be "tactical" or "strategic" and yet unreasonable. This is one of those cases. There can be little reason, tactical or otherwise, for defense counsel to offer *some* evidence of an alibi but not provide readily available and much

more compelling evidence that would tilt the timeline sharply in the defendant's favor. There simply cannot be an objectively reasonable tactical or strategic basis for that failure.

Meister therefore made a substantial showing of the denial of this Sixth Amendment right, and the District Court's denial of relief on the claim is debatable. Meister was never permitted to develop the factual basis of this claim at any stage in the state courts, and it is debatable that the state court's factual finding that counsel made a strategic decision to forgo this evidence was objectively reasonable in light of the evidence presented in the state courts under § 2254(d)(2). More than that, it is at least debatable that the state court's reading of *Strickland* – which forces post-conviction petitioners to prove “inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation” – is contrary to or an unreasonable application of *Strickland* and similar cases from this Court under § 2254(d)(1).

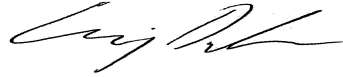
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Meister has never had a full and fair hearing on his substantial constitutional claims. He now sits in prison for life even though there is compelling evidence that he did not commit this crime. The Court of Appeals so misapplied this Court's COA standard that this Court should take up the case, reverse the Court of Appeals, and remand for further proceedings.

CONCLUSION

David Meister asks this Court to grant this petition and reverse the judgment of the Court of Appeals for the Ninth Circuit.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Craig H. Durham', written in a cursive style.

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