No. _____

In The
Supreme Court of the United States

RUFUS YOUNG,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case arises from a habeas petition brought under 28 U.S.C. § 2254 alleging ineffective assistance of counsel. The claim arose because defense counsel failed to argue that inculpatory statements made to law enforcement should be suppressed as the product of an illegal arrest. In state court, Mr. Young waited nearly six years for a response before filing a mandamus petition, which prompted the State to finally respond. That same day, the state post-conviction court denied Mr. Young's motion without affording him a hearing. It never found that the arrest was supported by probable cause; instead, it adopted the State's contention that the issue was litigated in the trial and on direct appeal. The state appellate court affirmed that ruling without a written opinion.

The federal habeas court rejected the State's argument that the issue was previously raised, and so it conducted de novo review of the claim. Nevertheless, it denied Mr. Young habeas relief, finding for the first time that the arrest was supported by probable cause. It only considered the transcript from an unrelated suppression hearing, even though the trial testimony of the lead detective showed a lack of probable cause. And it denied Mr. Young's request for an evidentiary hearing to develop the factual basis for the claim. The Eleventh Circuit affirmed. This petition presents the following question for review:

1. Does a district court abuse its discretion when it denies a habeas

petitioner an evidentiary hearing where the state record remains undeveloped, where the petitioner bears no fault for the failure to develop the record, and where the petitioner states a colorable claim for relief based on the totality of the record?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Rufus Young was the Petitioner-Appellant in the court below.

Respondent, the State of Florida, was the Respondent-Appellee in that appeal.

Petitioner is not a corporation. No party is a parent or publicly held company owning 10% or more of any corporation's stock.

STATEMENT OF RELATED PROCEEDINGS

- *State of Florida v. Rufus Young*, Case No. 05-739-CF-10A (Fla. 17th Jud. Cir. 2019). Order Denying Motion for Postconviction Relief entered on August 24, 2019.

- *Rufus Young v. State of Florida*, Case No. 4D19-3116 (Fla. 4th DCA 2022). Order denying postconviction relief per curiam affirmed on February 20, 2020.

- *Rufus Young v. State of Florida*, Case 0:20-cv-61074-RAR (S.D. Fla. 2022). Order Denying Habeas Corpus Petition entered on July 12, 2022.

- *Rufus Young v. State of Florida*, Case No. 22-13319 (11th Cir. 2024). Opinion affirming the district court entered on August 28, 2024. Order denying panel rehearing and rehearing en banc issued November 5, 2024.

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This case presents the opportunity to answer a question of exceptional importance left open in the wake of *Shinn v. Ramirez*, 596 U.S. 366 (2022). In *Shinn*, the Court wrote that even if a habeas petitioner satisfied all the requirements of 28 U.S.C. § 2254(e)(2), a federal court "still is not required to hold a hearing or take any evidence. Like the decision to grant habeas relief itself, the decision to permit new evidence must be informed by principles of comity and finality that govern every federal habeas case." *Shinn*, 596 U.S. at 380-81.

In the wake of *Shinn*, the lower courts have struggled to demarcate the outer limits of a district court's discretion in denying an evidentiary hearing. As explained below, the district court here stretched those limits beyond their breaking point.

DECISIONS BELOW

The Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, entered an Order Denying Mr. Young's Motion for Post-conviction Relief. App. 40a.

Florida's Fourth District Court of Appeal issued an order per curiam affirming that decision without a written opinion. *Young v. State*, 291 So. 3d 951 (4th DCA 2020).

Mr. Young petitioned the United States District Court for the Southern District of Florida for a writ of habeas corpus under 28 U.S.C. § 2254. The district

court denied his petition and ruled he was not entitled to an evidentiary hearing or a certificate of appealability. App. 14a-39a.

The Eleventh Circuit granted Mr. Young a Certificate of Appealability on a single issue but ultimately affirmed the order of the district court. App. 1a. It also denied his timely motion for rehearing and rehearing en banc on November 5, 2024. App. 41a.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over Mr. Young's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Having granted Mr. Young a certificate of appealability, the Eleventh Circuit had jurisdiction over the ensuing appeal. 28 U.S.C. § 2253(c); 28 U.S.C. § 1291. This petition is timely filed within 90 days of the order denying Mr. Young's request for rehearing and rehearing en banc. This Court has jurisdiction. 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

28 U.S.C. § 2254(e), which governs the availability of an evidentiary hearing in habeas proceedings, states as follows:

> (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall

> not hold an evidentiary hearing on the claim unless the applicant shows that—
>
> (A) the claim relies on—
>
> (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
>
> (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2254(e).

STATEMENT OF THE CASE

A. The State Trial Proceedings

A Florida grand jury indicted Rufus Young for attempted armed robbery and felony murder. App. 14a. Prior to trial, Mr. Young moved to suppress an inculpatory statement he made to the police. App. 26a. His attorney argued in the motion that the confession was "psychologically induced by police and/or in custody without having been adequately advised of *Miranda* Warnings." App. 26a.

At an evidentiary hearing on the motion, the lead investigator, Detective Berrena, testified that Mr. Young was walking on the street on his way to a job

interview when the officers approached him. (Doc. 17-2 at 8, 27).[1] Unlike his co-defendant, Benjamin Sanders, who was positively identified as the shooter, *id.* at 8, law enforcement had no evidence incriminating Mr. Young prior to his apprehension, apart from a "Crime Stoppers" tip that suggested he resembled the likeness of a composite sketch shown on television. *Id.* at 23. Detective Berrena said that a "different people" gave law enforcement Rufus Young's name, but he did not otherwise disclose the substance of the tips. *Id.* at 20-23. Before that, Detective Berrena did not know who Mr. Young was. *Id.* at 10.

When Mr. Young's attorney asked Detective Berrena to disclose the names of the tipsters, he refused, citing an apparent policy of anonymity associated with Crime Stoppers. *Id.* at 20. Undeterred, Mr. Young's counsel pressed the detective to say whether he knew any of their names, to which he responded, "I know one name, yes." *Id.* at 21.

Detective Berrena admitted that he could not use the Crime Stoppers tips for probable cause: "Just the fact they give me that information doesn't mean it goes in my report or I used it to further my—to make an arrest. I don't use it in the probable cause." *Id.* at 20-21.

Mr. Young's attorney asked the circuit court to compel the disclosure of the tipster's name, but the court ruled it was irrelevant to the hearing: "Counsel, I

[1]This section will cite to the docket of *Rufus Young v. State of Florida*, Case 0:20-cv-61074-RAR (S.D. Fla. 2022), which contains the record developed below.

understand what you're saying, but at this point in time how is the name of whatever this anonymous tipster, how is that relevant to the proceeding right now in this Motion To Suppress?" *Id.* at 22. The circuit court explained that Mr. Young had filed the motion "on certain grounds," and the judge could not see "what relevance the name of the anonymous tipster would have at these proceedings." *Id.* at 23.

Defense counsel also asked whether law enforcement had obtained any results related to the DNA sample Mr. Young provided, a question that prompted the State to object on relevance grounds: "This has nothing to do with his voluntariness to give a statement to the police." *Id.* at 24.

Defense counsel responded that it was relevant insofar as Mr. Young's confession was "false": "He didn't commit the crime, he wasn't present." *Id.* at 24. Thus, according to defense counsel, the results were "relevant to show the Court that there was no other evidence corroborating his statement." *Id.* The court overruled the objection, and law enforcement responded that the DNA results had not come back yet. *Id.*

Detective Berrena testified that Mr. Young, who was nineteen years old at the time and "very agreeable," did not say anything when they approached him on the street that tended to suggest that he had any involvement in the crime. *Id.* at 26. He did not run, and Detective Berrena characterized their interaction as a "polite conversation.":

> I told him that we were investigating a case that he may be involved in, things of that nature, and that when we get to the office, we'll discuss the specifics. I asked him if he wanted a cup of coffee or donuts or anything like that before we got there.

Id. at 28. Detective Berrena also confirmed on cross-examination that no physical evidence in the possession of law enforcement connected Mr. Young to the crime prior to his apprehension. *Id.* at 23. Though he initially denied involvement in any criminal activity, *id.* at 33, Mr. Young made an incriminating statement after seeing his co-defendant at the police station. *Id.* at 35. Detective Berrena agreed that there was no evidence, physical or otherwise, that linked Mr. Young to the crime, except his statement to law enforcement. *Id.* at 40.

The defense called Mr. Young, who had a different recollection of the circumstances related to his apprehension. *Id.* at 132-33. Mr. Young testified he was surrounded by nearly 15 police officers, including a K-9 unit, who handcuffed him and threw him into a police car. *Id.* at 133.

Mr. Young testified that he initially gave law enforcement a truthful account when he denied any involvement in the crimes. *Id.* at 142. However, law enforcement "wouldn't take no for an answer." *Id.* He feared that if the cops came to his house his mother would be evicted, so he tried "to think of something [he] could tell them, something they wanted to hear." *Id.* at 141-42. He testified that his statement "wasn't the truth." *Id.* at 146.

Dr. Michael Brannon, a forensic psychologist who had expertise regarding "false and coerced" confessions, also testified on Mr. Young's behalf. *Id.* at 157–176. Though he could not say for certain whether Mr. Young's confession was false or coerced, the expert opined based on his review of the techniques used in the videotaped interrogation that the "stage" was "certainly set for what could be a false confession." *Id.* at 176.

Seven days after the evidentiary hearing, Mr. Young's counsel filed a supplement to the motion to suppress, which he called a "Written Argument in Support of Defendant's Motion To Suppress Statements, Confessions, Admissions, and Statements Relating Thereto." (Doc. 9-1 at 283).

Even though Mr. Young testified that the police arrested him on the date in question, his attorney never argued that the statement given to law enforcement should be suppressed because the arrest was effectuated without a warrant or probable cause. *See id.* Nor did defense counsel attempt to provide witnesses corroborating Mr. Young's testimony. *Id.* Instead, defense counsel limited his argument to two grounds: (1) Mr. Young did not waive his *Miranda* rights because Detective Berrena did not verbally confirm that the defendant understood the waiver form that he signed; and (2) the confession was coerced. *Id.*

Defense counsel requested that the evidentiary hearing be re-opened. *Id.* at 285. When the trial court reconvened the hearing, Mr. Young's attorney called Jose Omar Vasquez Arita, a victim of the attempted robbery. (Doc. 17-2 at 203). Mr.

Vasquez testified that, the day following the attempted robbery, he aided an artist to create a facial composite. *Id.* at 203. He later picked a photograph in a line-up of the person who accompanied the shooter but was unsure whether the photo he picked was of the person present at the attempted robbery. *Id.* at 204.

After the conclusion of the hearing, the trial court denied the motion to suppress. (Doc. 9-1 at 291). It ruled that Mr. Young understood that he was waiving his *Miranda* rights. *Id.* at 292. It further found his interrogation was not "unduly long" or intimidating. Hence, it concluded that "based upon the totality of the circumstances Defendant's waiver was voluntary with a full awareness of the nature of the rights being abandoned and the consequences of their abandonment." *Id.* at 292. The order made no mention of an unlawful arrest.

In August of 2007, Mr. Young and his co-defendant stood trial. Mr. Vasquez testified that at around 7 p.m. on December 11, 2004, he was at a friend's house, talking to his friends. (Doc. No. 17-1 at 712-13). Two men appeared, and one of the men pointed his gun at him. *Id.* at 715-16. Shots were fired, and one shot hit a man in the head, a wound that would ultimately kill him. *Id.* at 719. Another shot hit a friend of Mr. Vasquez in the leg. *Id.*

Mr. Vasquez testified that he helped an artist render a composite. *Id.* at 719-20. He also picked out a photograph from a lineup that he believed looked most like the man who held him at gunpoint, but that did not occur until two weeks after the police had interrogated Mr. Young. *Id.* at 761. Mr. Vasquez never picked Mr. Young

out of a live lineup, but he identified him in court as the man who held him at gunpoint. *Id.* at 734. Other witnesses to the attempted robbery testified about the crime, but no one else put Mr. Young at the scene.

In contrast to Mr. Young's testimony at the suppression hearing, Detective Berrena testified that he did not initially place Mr. Young under arrest. *Id.* at 1082. He chose not to do so because, unlike Mr. Young's co-defendant, law enforcement lacked a positive identification for Mr. Young at this point in the investigation and only had a composite sketch to go on. *Id.* at 1082-83, 1106-07.

Detective Berrena had obtained a search warrant for Mr. Young's DNA and fingerprints, *id.* at 1173-74, but he had not secured an arrest warrant. Detective Berrena stated in the application that the DNA and fingerprints would either link him to the crime "or exonerate him." *Id.* at 1175.

During his cross-examination, Detective Berrena agreed that "there was absolutely no evidence linking Rufus Young to the actual shooting" at the time they interrogated him. *Id.* at 1174. He also admitted that, when he first spoke to Mr. Young, he "didn't think he was involved" in the armed robbery. *Id.* at 1132. Nonetheless, Detective Berrena subsequently testified over objection that Mr. Young was a suspect based on information that he received. *Id.* at 1211. He did not elaborate on what that information was or its source. *Id.*

In his case-in-chief, Mr. Young presented the testimony of Dr. Brannon, who testified about the dangers of false confessions and the circumstances that gave him

pause regarding this case. *Id.* at 1355-68. Ultimately, however, Dr. Brannon was unable to say whether Mr. Young's confession was a false confession. *Id.* at 1369-70.

Mr. Young also took the stand. He testified that he knew Benjamin Sanders and rode with him and another individual called "Meat" on the date of the robbery. *Id.* at 1402-07. Mr. Young claimed he was talking with a lady friend when Sanders and Meat left his vicinity. *Id.* at 1414. He testified he was not there when robbery took place, and he did not know about it. *Id.* at 1415-16.

Mr. Young also testified about the circumstances of his apprehension. His testimony squarely contradicted the testimony of Detective Berrena:

> He handcuffed me and put me in a police car. First, I had my hands behind my back. He took my property and sat me in the police car. But then he took my handcuffs off. He said he didn't have any reason to detain me, and he put me in the unmarked car.

Id. at 1417.

He again stated that there were "[p]robably 15 or 20" police officers around him at that time. *Id.* at 1417. As to his interrogation, Young testified that, at first, he was unsure what the police were even questioning him about. *Id.* at 1421. It was only when someone mentioned Deerfield Beach that Young understood what the police were asking about. *Id.* at 1424.

He "confessed" in hopes of protecting Sanders and keeping the police away from his mother's house (Young believed that her government-subsidized housing would be jeopardized if the police snooped around). *Id.* at 1424-26; 1434. Defense counsel

never took the position at trial that the confession should be suppressed because Mr. Young was detained without probable cause. In fact, he argued to the jury that Detective Berrena's decision to handcuff Young was "not even a material issue in the case." *Id.* at 1495.

The jury found Mr. Young guilty on all five counts. *Id.* at 1679-80. The trial court sentenced Mr. Young to life in prison without the possibility of parole on the felony murder count. *Id.* at 1691-92.

On appeal, his new counsel argued that the circuit court erred when it admitted Young's confession, because the confession was the fruit of an unlawful arrest and coercive police conduct, as his restraint and detention was indistinguishable from an arrest. (Doc. 16-1 at 62).

In response, the State argued that "[i]nsofar as Appellant argues that this confession was the product of an unlawful arrest," the argument was not preserved because the Motion and its related hearing concerned whether his confession was coerced. *Id.* at 107-08.

The Florida Fourth District Court of Appeal apparently agreed, as it issued an order per curiam affirming the conviction without a written opinion. *Id.* at 158.

B. The State Post-Conviction Proceedings

Mr. Young moved for post-conviction under Florida Rule of Criminal Procedure 3.850. He argued, *inter alia*, that his trial attorney was ineffective for failing to argue in connection with the motion to suppress that "incriminating statements made by

Young were not only the product of coercive police conduct, but were obtained after his initial detention became an unlawful arrest without probable cause, and for failing to call available witnesses that would have provided crucial testimony regarding Young's apprehension by police." App. 16a-17a.

On December 12, 2013, the circuit court ordered the State to file a response within 90 days. The State did not respond for nearly six years. App. 17a n.3. On July 26, 2019, Young filed a petition for a writ of mandamus in the Fourth District Court of Appeal, asking it to order the circuit court to rule on his motion for post-conviction relief. (*See* Doc. 16-3 at 94).

The state appellate court ordered the State to show cause within thirty days why the mandamus petition should not be granted. *Id.* Three days before its deadline, the State filed a response with the circuit court. App. 43a. Despite having argued that Mr. Young failed to preserve the unlawful arrest issue for appeal, the State reversed itself and claimed that trial counsel had, in fact, filed a motion to suppress, thereby "preserving the argument for appeal." App. 43a.

It also asserted that Mr. Young suffered no prejudice because his attorney filed the motion to suppress, attacked the voluntariness of the confession on cross examination of Detective Berrena, and argued to the jury that the statement to law enforcement was a false confession. App. 44a-45a.

The State never took the position that the arrest was supported by probable cause. On the contrary, it adopted the arguments in its briefing on direct appeal,

where the State claimed that Mr. Young's detention did not constitute an arrest. *Compare* App. at 44a *with* (Doc. 16-1 at 108-112). On the very same day that the State filed its response, the Florida circuit court denied the motion for post-conviction relief,[2] citing only "the reasons contained in the State's response." App. 40a.

Mr. Young appealed, raising the same arguments he brought in his motion for post-conviction relief. The state appellate once again per curiam affirmed the lower court without explanation. *Young v. State*, 291 So. 3d 951 (4th DCA 2020).

C. The Federal Habeas Proceedings

Mr. Young, proceeding pro se, filed a federal habeas petition pursuant to 28 U.S.C. § 2254. Among other claims, Mr. Young asserted that his trial counsel was ineffective by failing to raise the unlawful-arrest argument. App. 17a. He averred his counsel led him to believe that he had been arrested with a valid arrest warrant, even though that was not true. App. 25a. He also argued that his confession was the result of an illegal, warrantless arrest in violation of this Court's decision in *Dunaway v. New York*, 442 U.S. 200 (1979) and that counsel unreasonably failed to file a motion to suppress on that basis. App. 25a. Mr. Young also asserted that his trial attorney was ineffective for failing to call certain witnesses during his suppression hearing who could have testified about the illegality of his arrest. App. 25a. In response, the State argued defense counsel did file a motion to suppress which "addressed the

[2] Because the circuit court denied his motion before the show-cause deadline, the state appellate court denied the petition for a writ of mandamus as moot.

subject of the illegal arrest" and that Mr. Young failed to show he was prejudiced. App. 25a.

In adjudicating this claim, the district court conducted de novo review, instead of the deferential standard normally applied under 28 U.S.C. § 2254. App. 25a. The court explained that de novo review was permissible in light of the complex procedural history and the court's conclusion that the "claim would fail on the merits in any event." *See* App. 24a (citing *Berghuis v. Thompkins*, 560 U.S. 370, 390 (2010) and quoting *Dallas v. Warden*, 964 F.3d 1285, 1307 (11th Cir. 2020)).

At the outset, the district court rejected the State's argument that trial counsel raised the illegal arrest issue in the initial motion to suppress. App. 26a. It found that the primary argument made in the motion was that Mr. Young's statements were psychologically induced by police without him having been adequately advised of his *Miranda* rights. App. 26a. The district court also reasoned that the "state trial court explicitly denied the motion to suppress on the basis that Petitioner did voluntarily waive his *Miranda* rights—there was no discussion about the legality of Petitioner's arrest." App. 27a.

Nevertheless, the court denied habeas relief. App. 27a. It discounted the lack of an arrest warrant because "Detective Berrena testified during the suppression hearing that Petitioner was picked up 'off the street' and not from his home or another private location." App. 27a. As such, "the lack of an arrest warrant, by itself, would not have made any arrest illegal." App. 27a.

The court also rejected the applicability of *Dunaway*. In doing so, the court assumed that Mr. Young was under arrest from the moment Detective Berrena made contact with him. App. 27a. Yet, based on a cold, undeveloped record, the district court found for the first time that Mr. Young's arrest was supported by probable cause. App. 28a.

Instead of looking at the totality of the record, including the trial transcripts, the district court only evaluated the testimony of Detective Berrena at the suppression hearing. App. 28a-29a. It found as follows:

> Based on Detective Berrena's testimony during the suppression hearing, the Court concludes that he possessed the following information prior to Petitioner's arrest: (1) there were two suspects involved in the armed robbery/shooting; (2) multiple, anonymous tipsters identified Benjamin Sanders and Rufus Young as the two perpetrators; (3) one of the anonymous tipsters who claimed that Petitioner was involved was identified by Detective Berrena; and (4) Benjamin Sanders was positively identified as the shooter—partially vindicating the tipsters who had said that both Sanders and Petitioner were involved.

App. 28a-29a.

The district court recognized that "an anonymous tip, by itself, cannot establish probable cause," but it determined the tip had "sufficient corroboration" to meet the standard for probable cause. App. 29a (citing *Illinois v. Gates*, 462 U.S. 213, 242 (1983)).

In reaching these conclusions, the district court apparently failed to consider the trial testimony of Detective Berrena, who agreed on cross-examination that "there

was absolutely no evidence linking Rufus Young to the actual shooting" at the time they interrogated him. (Doc. 17-1 at 1175). Detective Berrena also admitted that, when he first spoke to Mr. Young, he "didn't think he was involved" in the armed robbery. *Id.* at 1132.

The district court made no mention of the fact that defense counsel was restricted from delving into the identity of the tipsters and the substance of the tips, topics the state trial court deemed irrelevant. Nor did the district court credit Detective Berrena's testimony at the suppression hearing that Crime Stoppers tips could not be used to establish probable cause in the furtherance of an arrest. (Doc. 17-2 at 20-21). Finally, the district court refused to afford Mr. Young an evidentiary hearing, even though he never had the chance to develop the claim during any of the state court proceedings. App. 38a. The district court also denied him a certificate of appealability. App. 38a.

Mr. Young moved the district court to alter or amend its judgment pursuant to Federal Rule of Civil Procedure 59(e). (Doc. 22). In it, he argued that the district court erred when it found that probable cause existed for his arrest. *Id.* at 2-3. He attached a copy of the application for a warrant to obtain Mr. Young's DNA and fingerprints, in which Detective Berrena advised the magistrate that one individual who led law enforcement to suspect Mr. Young came from a "street source," as opposed to a citizen informant. *Id.* at 10. The application also stated that law enforcement needed the DNA and fingerprints to "assist in identifying the defendant

as the source of the evidence or exclude him as a suspect." *Id.* at 11. The district court denied the motion by way of an endorsed order. (Doc. 23).

Mr. Young moved for a certificate of appealability in the Eleventh Circuit, which granted him one solely as to:

> Whether the district court erred in denying Ground One of Young's § 2254 petition, without holding an evidentiary hearing, based on the de novo determination that police possessed probable cause to arrest Young and, thus, that he could not establish ineffective assistance as to any of counsel's alleged deficiencies related to a motion to suppress his incriminating statement.

See App. 2a. In the order granting his request for a certificate of appealability, the Eleventh Circuit alluded to the motion to alter or amend Mr. Young filed in the district court, but the Eleventh Circuit found a certificate of appealability related to that motion would be "redundant," given it had already granted the certificate of appealability on a similar issue.

In his briefing, Mr. Young renewed the argument that he received ineffective assistance of counsel because his attorney failed to argue that the statement to law enforcement should be suppressed as the product of an illegal arrest. He additionally argued that the district court erred when it denied him an evidentiary hearing to develop his claim. *See* App. 9a.

The Eleventh Circuit affirmed the denial of habeas relief. Like the district court, the Eleventh Circuit concluded that it should review his claim de novo because

"because it is not clear that Young presented the issue of the legality of his arrest to the state court or that the state court addressed the issue on the merits." App. 7a.

It explained this decision as follows:

> The state post-conviction court's analysis of the viability of Young's claim regarding the legality of his arrest was limited to the 'reasons contained in the [s]tate's response,' and the state's response argued in part that Young's claim was procedurally barred because the state appellate court considered the merits of the claim on appeal. The appellate court's decision on direct appeal was an unelaborated per curiam opinion, so it is again appropriate to look to the trial court's decision of the issue on direct appeal. As the district court correctly noted, the trial court explicitly denied Young's motion to suppress on the basis that he voluntarily waived his right against self-incrimination and did not discuss the legality of Young's arrest.

App. 7a-8a (internal citation omitted). Having found the state court failed to adjudicate the claim, the Eleventh Circuit elected to "skip over" a "complicated review of the claim's procedural bar issues and instead review the claim de novo because the claim nonetheless fails on the merits." App. 8a.

The Eleventh Circuit echoed the logic of the district court, opining as follows:

> The record demonstrates that the district court did not err in determining that law enforcement had probable cause to arrest Young, thus rendering his ineffective assistance claim impotent for a lack of deficient performance. Even if Berrena placed Young under arrest when they initially had contact, Berrena had probable cause to place Young in custody because, upon consideration of the totality of the circumstances, Berrena's information was sufficiently corroborative to render the anonymous tips reliable and generate probable cause. Because Berrena had probable cause to arrest Young, Young's post-arrest inculpatory

> statements were not the fruits of an unlawful arrest, and the exclusionary rule did not apply to his statements.

App. 8a-9a (internal citations omitted). The Eleventh Circuit also concluded that Mr. Young was not entitled to an evidentiary hearing because "the allegations in Young's petition would not entitle him to relief if proven true." App. 9a (citing v. *Breedlove v. Moore*, 279 F.3d 952, 960 (11th Cir. 2002) and *Landers v. Warden, Att'y Gen. of Ala.*, 776 F.3d 1288, 1295 (11th Cir. 2015)).

Mr. Young moved for rehearing and rehearing en banc in the Eleventh Circuit. Mot. for Reh'g at 1. He pointed out that the reliance on hearsay from an unidentified tipster without knowing the basis of the tipster's knowledge conflicted with this Court's decision in *Aguilar v. Texas,* 378 U. S. 108 (1964). *Id.* at 5. He also decried the courts' failure to consider the affidavit he filed in the motion to alter or amend, which, he argued, showed that law enforcement lacked probable cause to arrest him. *Id.* at 6.

In addition, Mr. Young argued that the failure to afford him an evidentiary hearing posed "serious concerns" about procedural fairness and due process. He pointed out that the appellate court relied solely on the transcript of an "unrelated" suppression hearing convened for a different purpose. *Id.* at 6.

He argued that the "transcript does not address the specific facts surrounding the arrest of Young and does not constitute an appropriate record for determining whether probable cause existed at the time of the arrest." *Id.* Citing *Townsend v. Sain*, 312 U.S. 793 (1963), he maintained that a federal court "must hold an

evidentiary hearing if the State Court's fact-finding process was inadequate." *Id.* at 7. Holding to the contrary, he argued, violated clearly established federal law and warranted en banc review. *Id.* at 8-9.

The Eleventh Circuit denied Mr. Young's motion. App. 42a. This timely petition followed.

REASONS FOR GRANTING THE WRIT

This Court should issue a writ of certiorari to answer a question of exceptional importance: Does a district court abuse its discretion when it denies a habeas petitioner an evidentiary hearing where the state record remains undeveloped, where the petitioner bears no fault for the failure to develop the record, and where the petition states a colorable claim for relief based on the totality of the record?

In *Townsend v. Sain*, 372 U.S. 293, 309 (1963), the Court observed that the "problem of the power and duty of federal judges, on habeas corpus, to hold evidentiary hearings . . . is a recurring one." That is because it is the "typical, not the rare, case in which constitutional claims turn upon the resolution of contested factual issues." *Id.* at 312.

The *Townsend* Court identified six different circumstances that would warrant an evidentiary hearing: (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly

discovered evidence; (5) the material facts were not adequately developed at the state-court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing. *Id.* at 313.

The Court explained its rationale as follows: "There cannot even be the semblance of a full and fair hearing unless the state court actually reached and decided the issues of fact tendered by the defendant." *Id.* at 314. This rule required the existence of some factual findings by the state court, and "if no express findings of fact have been made by the state court, the District Court must initially determine whether the state court has impliedly found material facts." *Id.* In the absence of such findings, the Court held a petitioner is entitled to a hearing unless he "deliberately bypassed" the orderly procedure of the state courts.

In the years that followed, the Court and Congress have restricted the power of district courts to conduct evidentiary hearings on federal habeas petitions. In *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 8-9 (1992), the Court overruled the "deliberate bypass standard" as articulated in *Townsend* and instead ruled that the failure to develop the record in state court should be excused upon a showing of "cause and prejudice."

Congress then further circumscribed the availability of evidentiary hearings when it enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), now codified at U.S.C. § 2254, which "raised the bar *Keeney* imposed on

prisoners who were not diligent in state-court proceedings." *Williams v. Taylor*, 529 U.S. 420, 432 (2000).

Section 2254(e)(2) provides that, if a prisoner "has failed to develop the factual basis of a claim in State court proceedings," a federal court may hold "an evidentiary hearing on the claim" in only two limited scenarios. Either the claim must rely on (1) a "new" and "previously unavailable" "rule of constitutional law" made retroactively applicable by this Court, or (2) "a factual predicate that could not have been previously discovered through the exercise of due diligence." § 2254(e)(2)(A).

However, the strict limitations of § 2254(e)(2)(A) and (B) apply only when the petitioner has "failed to develop" the record in state court. 28 U.S.C. § 2254(e)(2). Failure to develop the record in this context "mean[s] that the prisoner must be 'at fault' for the undeveloped record in state court." *Shinn v. Ramirez*, 596 U.S. at 382 (quoting *Keeney*, 504 U.S. at 9).

"A prisoner is 'at fault' if he 'bears responsibility for the failure' to develop the record." *Id.* (quoting *Keeney*, 504 U.S. at 9). "If there has been no lack of diligence at the relevant stages in the state proceedings, the prisoner has not 'failed to develop' the facts under 2254(e)(2)'s opening clause." *Williams*, 529 U.S. at 437. Likewise, a habeas petitioner is not "at fault" if his diligent efforts were "thwarted" by "the conduct of another or by happenstance." *Id.* at 432.

The Ninth Circuit has held a petitioner should receive an evidentiary hearing in a federal habeas proceeding if he (1) can show he has not failed to develop the

factual basis of the claim in the state courts; (2) meets one of the factors identified by the Supreme Court in *Townsend*; and (3) makes colorable allegations that, if proved, would entitle him to habeas relief. *Insyxiengmay v. Morgan*, 403 F.3d 657, 669-71 (9th Cir. 2005). The Third Circuit also looks to *Townsend* in determining whether a federal habeas court properly exercised its discretion to grant or deny a petitioner an evidentiary hearing. *See*, *e.g.*, *Cristin v. Brennan*, 281 F.3d 404, 414 (3d Cir. 2002).

The Second Circuit has similarly emphasized the discretion of a federal habeas courts to grant an evidentiary hearing where material facts regarding the claim are in dispute. *Pagan v. Keane*, 984 F.2d 61, 63-65 (2d Cir. 1993) (reversing district court's finding that it lacked discretion to hold evidentiary hearing). And in the Second Circuit, where "specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry." *Drake v. Portuondo*, 321 F.3d 338, 345 (2d Cir. 2003) (citations and internal quotation marks omitted).

In other circuit courts of appeals, such as the Sixth Circuit, courts have discounted the continued viability of *Townsend v. Sain* and have all but eliminated evidentiary hearings predicated on that authority. *Martin v. Warden*, No. 2:21-cv-5102, 2022 U.S. Dist. LEXIS 232918, at *17 (S.D. Ohio Dec. 26, 2022) ("AEDPA has completely supplanted *Townsend* as a source of law on holding evidentiary hearings in federal habeas."); *Penland v. Bowerman*, No. 1:18-cv-648, 2022 U.S. Dist. LEXIS

109062, at *34-35 (S.D. Ohio June 16, 2022) ("The liberality with which evidentiary hearings were available under *Townsend* has virtually disappeared in the years since it was decided.") (citations omitted).

This Court should adopt the test of the Ninth Circuit and affirm the discretion of district courts to hold evidentiary hearings where a habeas petitioner has not received a fair shot at litigating his post-conviction claim. Applying the Ninth Circuit's test to Mr. Young's case, it was an abuse of discretion to deny him a hearing.

With regard to the first element of the test, Mr. Young was not "at fault" for the failure to develop the record. He raised the illegal arrest claim in the state post-conviction court, which sat on the motion for some six years. Mr. Young was diligent in pursuing it; indeed, he forced the issue by petitioning the state appellate court for mandamus relief. To moot the mandamus action, the state court issued an order the same day that the State filed its response. App. 40a. The order contained no independent reasoning but instead simply denied Mr. Young relief for "the reasons contained in the State's response." *Id*.

Mr. Young did everything in his power, including filing a mandamus petition, to advance the litigation of his claim. Florida courts are required to hold an evidentiary hearing on a facially valid post-conviction claim that is not conclusively refuted by the record. *Peede v. State*, 748 So. 2d 253, 257 (Fla. 1999). There was no argument that the claim was facially invalid. App. 43a-46a. Moreover, as the district court found, trial counsel did not properly raise or preserve the illegal arrest issue

during the suppression proceedings. Thus, the State's argument in its post-conviction response that these points were raised on appeal and were being relitigated is "fallacious," since the "points were raised but rejected on appeal for failure of counsel to preserve them by objection below." *Vento v. State*, 621 So. 2d 493, 495 (Fla. 4th DCA 1993) (citing its prior per curiam affirmance). In other words, no view of the record could support a finding that Mr. Young was at fault for the failure to develop the record regarding his illegal arrest claim.

Mr. Young also satisfied the criteria of *Townsend* because the merits of the factual dispute regarding the illegal arrest claim were not resolved in the state hearing. This is owing primarily to the post-conviction court's blind adoption of the State's arguments the same day it received the response. Moreover, as the district court found, the suppression hearing only adjudicated the voluntariness of the confession, and so the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing on the illegal arrest claim. Finally, the material facts were not adequately developed at the state-court hearing because the state court found that the identity and underlying knowledge of the tipsters was irrelevant to the suppression issue before it. Thus, the state trier of fact did not afford Mr. Young a full and fair fact hearing to develop his claim.

Finally, contrary to the findings of the district court and the Eleventh Circuit, Mr. Young stated a colorable claim for relief. For claims of ineffective assistance of counsel, a petitioner must demonstrate both that (1) counsel's performance was

deficient, meaning that it fell below an objective standard of reasonableness, and (2) the petitioner was prejudiced by the deficient performance, i.e., there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986).

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. Under the exclusionary rule, evidence cannot be used against a defendant in a criminal trial where that evidence was obtained via an encounter with police that violated the Fourth Amendment. *Dunaway v. New York*, 442 U.S. 200, 212 (1979).

The district court and the Eleventh Circuit, crediting Mr. Young's account, assumed that he was placed under arrest when law enforcement picked him up off the street. This was consistent with his testimony at trial and the suppression hearing that fifteen to twenty law enforcement officers handcuffed him and threw him in the back of a police car.

Nevertheless, the district court found that Mr. Young's arrest was supported by probable cause. This finding was erroneous for several reasons. First, the district court lacked sufficient information to make that determination. As noted above, the trial court prevented defense counsel from inquiring about the source and substance of the tips that suggested that Mr. Young was involved because it found the topic irrelevant. If the district court held an evidentiary hearing, Mr. Young could have probed whether the sources were reliable or whether the tips were sufficiently corroborated to establish probable cause.

Perhaps more importantly, both the district court and the Eleventh Circuit restricted the analysis to the transcript of the suppression hearing. This approach violates the tenets of *Strickland*, which requires a court to "consider the totality of the evidence before the judge or jury." *Strickland*, 466 U.S. at 695.

There was no mention in either opinion of the trial testimony of Detective Berrena, who agreed on cross-examination that "there was absolutely no evidence linking Rufus Young to the actual shooting" at the time they interrogated him. (Doc. 17-1 at 1175). Detective Berrena also admitted that, when he first spoke to Mr. Young, he "didn't think he was involved" in the armed robbery. *Id.* at 1132. Detective Berrena, moreover, testified at trial that he had received a warrant to obtain Mr. Young's DNA and fingerprints because that warrant might *exclude* him as a suspect. *Id.* at 1175.

Finally, though the courts below cited *Illinois v. Gates*, 462 U.S. 213, 230-32 (1983), under that decision, probable cause depends on the "veracity" and "basis of knowledge" of persons supplying hearsay information, combined with the results of independent police investigation. *Id.* at 238, 241-44. The Eleventh Circuit and the district court simply lacked sufficient information regarding the veracity of the tips or the basis of knowledge of the tipsters. Accordingly, it was erroneous to deny Mr. Young an evidentiary hearing.

CONCLUSION

Based on the foregoing, this Court should grant this petition, review the decision below, and remand this case for an evidentiary hearing.

Respectfully submitted on this 3rd day of February, 2025.

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APPENDIX

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[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-13319

Non-Argument Calendar

RUFUS YOUNG,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:20-cv-61074-RAR

Before JILL PRYOR, NEWSOM, and DUBINA, Circuit Judges.

PER CURIAM:

Petitioner Rufus Young, a Florida state prisoner proceeding with counsel, appeals the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas petition. A single judge of this court granted a certificate of appealability ("COA") on the following issue:

> Whether the district court erred in denying Ground One of Young's § 2254 petition, without holding an evidentiary hearing, based on the *de novo* determination that police possessed probable cause to arrest Young and, thus, that he could not establish ineffective assistance as to any of counsel's alleged deficiencies related to a motion to suppress his incriminating statements?

Young argues that the district court should have granted his § 2254 petition because his trial counsel was ineffective for failing to challenge the allegedly unlawful arrest that led to his confession. Having read the parties' briefs and reviewed the record, we affirm the district court's order denying Young habeas relief.

I.

We review *de novo* the district court's denial of a habeas corpus petition. *McNair v. Campbell*, 416 F.3d 1291, 1297 (11th Cir. 2005). That is, we review *de novo* "the district court's decision about whether the state court acted contrary to clearly established federal law, unreasonably applied federal law, or made an unreasonable

determination of fact." *Reed v. Sec'y, Fla. Dep't of Corr.*, 593 F.3d 1217, 1239 (11th Cir. 2010) (quotation marks omitted); *see* 28 U.S.C. § 2254(d). The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a "highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773, 130 S. Ct. 1855, 1862 (2010) (internal quotation marks omitted). Thus, we review a district court's decision *de novo* but typically review the state post-conviction court's decision with deference. *Reed*, 593 F.3d at 1239. However, the deference mandated by the AEDPA only applies where a state court has actually adjudicated a claim on the merits. *See* 28 U.S.C. § 2254(d). When a claim is properly presented to the state court, but the state court does not adjudicate it on the merits, review is *de novo*. *Cone v. Bell*, 556 U.S. 449, 472, 129 S. Ct. 1769, 1784 (2009).

II.

In applying AEDPA deference, a federal court's first step is to identify the highest state-court decision that evaluated the claim on its merits. *Marshall v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1277, 1285 (11th Cir. 2016). When that decision does not come accompanied with a reasoned opinion, the federal court should "look through" the unexplained decision to the last related state-court decision that does provide a relevant rationale and should then presume that the unexplained decision adopted the same reasoning. *Wilson v. Sellers*, 584 U.S. 122, 125, 138 S. Ct. 1188, 1192 (2018) (quotation marks omitted).

Courts can deny a habeas petition without resolving the question of what level of deference is appropriate if the petitioner's claim is meritless under *de novo* review. *Berghuis v. Thompkins*, 560 U.S. 370, 390, 130 S. Ct. 2250, 2265 (2010). In other words, the Supreme Court has recognized an "Ockham's razor" approach whereby the district court can "skip over" a complicated review of a claim's procedural bar issues and instead review it *de novo*, but only when the "claim would fail on the merits in any event." *Dallas v. Warden*, 964 F.3d 1285, 1307 & n.4 (11th Cir. 2020) (quotation marks omitted).

For claims of ineffective assistance of counsel, a petitioner must demonstrate both that (1) counsel's performance was deficient, meaning that it fell below an objective standard of reasonableness, and (2) the petitioner was prejudiced by the deficient performance, i.e., there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064-65, 2068 (1984). If both are shown, the petitioner's counsel did not function as "counsel" guaranteed by the Sixth Amendment, and the denial of the petitioner's right should be remedied. *Id.* at 687; *see* U.S. Const. amend. VI.

"There is a strong presumption that counsel's performance falls within the wide range of professional assistance," and "the defendant bears the burden of proving that counsel's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman v. Morrison*,

477 U.S. 365, 381, 106 S. Ct. 2574, 2586 (1986) (internal quotation marks omitted). "[A]ny deficiencies of counsel in failing to raise or adequately pursue [meritless issues] cannot constitute ineffective assistance of counsel." *Owen v. Sec'y for Dep't of Corr.*, 568 F.3d 894, 915 (11th Cir. 2009). Because both parts of the *Strickland* test must be satisfied in order to show ineffective assistance, we need not address the deficient performance prong if the defendant cannot meet the prejudice prong, or vice versa. *Holladay v. Haley*, 209 F.3d 1243, 1248 (11th Cir. 2000).

"[I]t is well established that a habeas petitioner is entitled to an evidentiary hearing if he or she alleges facts that, if proved at the hearing, would entitle petitioner to relief." *Breedlove v. Moore*, 279 F.3d 952, 960 (11th Cir. 2002) (quoting *Meeks v. Singletary*, 963 F.2d 316, 319 (11th Cir. 1992)). For a federal habeas petitioner to be "entitled to a federal evidentiary hearing on a claim that has been adjudicated by the state court, he must demonstrate a clearly established federal-law error or an unreasonable determination of fact on the part of the state court, based solely on the state court record." *Landers v. Warden, Att'y Gen. of Ala.*, 776 F.3d 1288, 1295 (11th Cir. 2015).

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. Under the exclusionary rule, evidence cannot be used against a defendant in a criminal trial where that evidence was

obtained via an encounter with police that violated the Fourth Amendment. *United States v. Perkins*, 348 F.3d 965, 969 (11th Cir. 2003). This exclusionary rule extends beyond the direct products of the constitutional violation to the "fruit of the poisonous tree"—evidence that became available only through the exploitation of the police misconduct rather than through an independent, legitimate search. *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963).

Arrests must be based on probable cause. *Miller v. Harget*, 458 F.3d 1251, 1259 (11th Cir. 2006). "Probable cause exists when the facts and circumstances within the officers' knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Id.* (internal quotation marks omitted). Probable cause requires "only a probability or substantial chance" of criminal activity. *Paez v. Mulvey*, 915 F.3d 1276, 1286 (11th Cir. 2019) (internal quotation marks omitted). It does not require anything close to conclusive proof or even a finding made by a preponderance of the evidence. *Id.* It is a preliminary determination. *Id.*

"[I]n making a warrantless arrest[,] an officer may rely upon information received through an [anonymous] informant, rather than upon his direct observations, so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge." *Illinois v. Gates*, 462 U.S. 213, 242, 103 S. Ct. 2317, 2334 (1983) (internal quotation marks omitted). The

Supreme Court has affirmed a totality-of-the-circumstances approach to determining the weight due to information from confidential informants. *Id.* at 238, 103 S. Ct. at 2332. Anonymous tips "may contribute to a probable cause determination, but in assigning probative weight to such tips, courts must assess the totality of the circumstances surrounding them, including the tips' reliability." *Cozzi v. City of Birmingham*, 892 F.3d 1288, 1295 (11th Cir. 2018) (citing *Gates*, 462 U.S. at 230-32, 103 S. Ct. at 2328-29).

III.

As an initial matter, we review Young's claim *de novo*, rather than applying the deference in § 2254(d) and the AEDPA, because it is not clear that Young presented the issue of the legality of his arrest to the state court or that the state court addressed the issue on the merits. *See Berghuis*, 560 U.S. at 390, 130 S. Ct. at 2265; *Dallas*, 964 F.3d at 1307. In determining whether to apply AEDPA deference, the first step is to identify the highest state-court decision that evaluated a claim on its merits, and when such a decision is not accompanied with a reasoned opinion, we "look through" the unexplained decision to the last related state-court decision that does provide a relevant rationale and presume that the unexplained decision adopted the same reasoning. *Wilson*, 584 U.S. at 125, 138 S. Ct. at 1192; *Marshall*, 828 F.3d at 1285.

Thus, we will "look through" the Fourth District Court of Appeal's affirmance of the denial of post-conviction relief and look to the lower state post-conviction court's reasoning. *See Wilson*, 584 U.S. at 125, 138 S. Ct. at 1192; *Marshall*, 828 F.3d at 1285. The state

post-conviction court's analysis of the viability of Young's claim regarding the legality of his arrest was limited to the "reasons contained in the [s]tate's response," and the state's response argued in part that Young's claim was procedurally barred because the state appellate court considered the merits of the claim on appeal. The appellate court's decision on direct appeal was an unelaborated *per curiam* opinion, so it is again appropriate to look to the trial court's decision of the issue on direct appeal. *See Wilson*, 584 U.S. at 125, 138 S. Ct. at 1192; *Marshall*, 828 F.3d at 1285. As the district court correctly noted, the trial court explicitly denied Young's motion to suppress on the basis that he voluntarily waived his right against self-incrimination and did not discuss the legality of Young's arrest. Accordingly, we will "skip over" a complicated review of the claim's procedural bar issues and instead review the claim *de novo* because the claim nonetheless fails on the merits, as discussed below. *See Dallas*, 964 F.3d at 1307.

The record demonstrates that the district court did not err in determining that law enforcement had probable cause to arrest Young, thus rendering his ineffective assistance claim impotent for a lack of deficient performance. *See Gates*, 462 U.S. at 238, 103 S. Ct. at 2332; *Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064. Even if Berrena placed Young under arrest when they initially had contact, Berrena had probable cause to place Young in custody because, upon consideration of the totality of the circumstances, Berrena's information was sufficiently corroborative to render the anonymous tips reliable and generate probable cause. *See Gates*, 462 U.S. at 242, 103 S. Ct. at 2334; *Miller*, 458 F.3d at 1259; *Cozzi*, 892 F.3d at

1295. Because Berrena had probable cause to arrest Young, Young's post-arrest inculpatory statements were not the fruits of an unlawful arrest, and the exclusionary rule did not apply to his statements. *See Wong Sun*, 371 U.S. at 488, 88 S. Ct. at 417; *Perkins*, 348 F.3d at 969; *Miller*, 458 F.3d at 1259. Thus, Young's counsel's failure to move to suppress the statements as fruits of an unlawful arrest was not deficient performance because such a motion would have been meritless. *See Owen*, 568 F.3d at 915.

Because we conclude from the record that the allegations in Young's petition would not entitle him to relief if proven true, he was not entitled to an evidentiary hearing before the district court. *See Breedlove*, 279 F.3d at 960; *Landers*, 776 F.3d at 1295. Accordingly, based on the aforementioned reasons, we affirm the district court's judgment denying Young habeas relief.

AFFIRMED.

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13319

RUFUS YOUNG,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:20-cv-61074-RAR

ORDER:

Rufus Young is a Florida prisoner serving life imprisonment for felony murder and four counts of attempted armed robbery. He moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP"), following the district court's denials of his 28 U.S.C. § 2254 petition and Fed. R. Civ. P. 59(e) motion.[1] To obtain a COA, Young must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

Here, reasonable jurists would debate whether the district court erred in denying Ground One of Young's § 2254 petition, which challenged counsel's performance related to a motion to suppress Young's incriminating statements. The district court denied Ground One based on its *de novo* determination that police possessed probable cause to arrest Young and, thus, the outcome of the suppression motion would not have been different regardless of counsel's alleged deficiencies. Because reasonable jurists would debate whether the district court erred in determining that police had probable cause to arrest Young, his motion for a COA is GRANTED IN PART, only on the following issue:

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[1] Although Young raised three grounds in his § 2254 petition, in his current motion for a COA, he expressly limits his request for a COA to the two grounds addressed in this order. *See Jones v. Sec'y, Dep't of Corr.*, 607 F.3d 1346, 1353-54 (11th Cir. 2010).

> Whether the district court erred in denying Ground One of Young's § 2254 petition, without holding an evidentiary hearing, based on the *de novo* determination that police possessed probable cause to arrest Young and, thus, that he could not establish ineffective assistance as to any of counsel's alleged deficiencies related to a motion to suppress his incriminating statements?

Because the appeal would not be frivolous, and because Young's financial affidavit reflects that he is indigent, his motion for IFP status is GRANTED. *See* 28 U.S.C. § 1915.

With respect to Ground Two of Young's § 2254 petition, reasonable jurists would not debate the district court's determination that he could not establish an entitlement to relief based on counsel's alleged failure to advise him about the applicability of the "independent act doctrine"[2] as a defense in his case. A defense based on the independent act doctrine would have been inconsistent with Young's trial testimony and alibi defense, and Florida law precludes ineffective assistance claims "for failing to pursue a . . . defense [that] would have been inconsistent with [Young's] theory[.]" *See Dufour v. State*, 905 So. 2d 42, 52-53 (Fla. 2005).

As to Young's Rule 59(e) motion, although he alerted the district court to a potential error in the decision denying his

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[2] The independent act doctrine provides that, when a defendant and codefendant have a common plan to commit a crime, but the codefendant commits a criminal act outside of the common plan, the defendant is not responsible for the independent act of the codefendant. *See Ray v. State*, 755 So. 2d 604, 609 (Fla. 2000).

§ 2254 petition, a COA for the Rule 59(e) motion would be redundant of the COA that he already has been granted. Accordingly, his motion for a COA is DENIED IN PART, as to all other issues.

In light of Young's *pro se* status and the potential complexity of his appeal, the interests of justice and judicial economy dictate that he receive appointed counsel. *See Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993); *See* 28 U.S.C. § 1915(e)(1). Accordingly, counsel will be *sua sponte* appointed, by separate order, to represent Young on appeal.

/s/ Nancy G. Abudu
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-61074-RAR

RUFUS YOUNG,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____/

ORDER DENYING HABEAS CORPUS PETITION

THIS CAUSE is before the Court on a *pro se* Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, challenging Petitioner's convictions and sentences imposed by the Seventeenth Judicial Circuit Court in and for Broward County in Case No. 05-000739CF10A. *See* Petition [ECF No. 1] ("Pet."). Respondent filed a Response to the Petition, *see* Response to Order to Show Cause ("Response") [ECF No. 15], and Petitioner filed a Reply, [ECF No. 20]. Having carefully reviewed the record and governing law, and for the reasons set forth below, the Court **DENIES** the Petition.

PROCEDURAL HISTORY

The Petitioner, along with a codefendant, was indicted on five counts in state court: one count of felony murder in the first degree, in violation of Fla. Stat. § 782.04(1)(a)2. (Count 1), and four counts of attempted armed robbery in violation of Fla. Stat. § 812.13(2)(a) (Counts 2–5). Indictment [ECF No. 16-1] at 7–9. After a jury trial, the Petitioner was adjudicated guilty on all five counts of the Indictment and was sentenced to life imprisonment on Count 1 and four

concurrent fifteen (15) year sentences on the remaining counts. *See* Judgment and Sentencing Orders [ECF No. 16-1] at 11–28.

Petitioner appealed his conviction and sentences to the Florida Fourth District Court of Appeal ("Fourth DCA"). Petitioner raised five claims on direct appeal: (1) the trial court erred when it admitted Petitioner's "involuntary confession," Direct Appeal Initial Brief [ECF No. 16-1] at 51; (2) the trial court erred when it failed to find that the State committed a discovery violation after "the prosecutor falsely represented to the court . . . [that Petitioner] identified himself to [his mother] as the person in a composite sketch related to the crime," *id.*; (3) trial counsel rendered ineffective assistance of counsel "when he failed to object when the State repeatedly insinuated to the jury [that Petitioner] had confessed involvement in the crime to his mother," *id.*; (4) "the trial court committed reversible error when it repeatedly barred Appellant from recross-examination to explore [new] material that was central to the issues in his trial," *id.* at 52; and (5) the "cumulative effect" of the prosecutor's comments during closing arguments "reached down into the validity of the trial and caused a verdict not based on evidence," *id.* The appellate court affirmed the trial court in an unwritten opinion dated April 27, 2011. *See Young v. State*, 59 So. 3d 1151 (Fla. 4th DCA 2011). The Fourth DCA issued its mandate thereafter on May 27, 2011. Direct Appeal Mandate [ECF No. 16-1] at 160.

After Petitioner's direct appeal concluded, Petitioner attempted to file a "Motion for Postconviction Relief" pursuant to Florida Rule of Criminal Procedure 3.850. *See* First Motion for Postconviction Relief [ECF No. 16] at 162–80. The first page of the Postconviction Motion indicated that it was provided to prison officials for mailing on January 23, 2012,[1] and received by

[1] "Under the 'prison mailbox rule,' a pro se prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." *Williams v. McNeil*, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009). "Absent evidence to the contrary, [courts] assume that a prisoner delivered a filing to prison authorities on the date that he signed it." *Jeffries v. United States*, 748 F.3d 1310, 1314 (11th Cir. 2014).

the state court on January 30, 2012. *Id.* at 162. On May 16, 2013, Petitioner filed a "new" Motion for Postconviction Relief. *See* Second Motion for Postconviction Relief [ECF No. 16-1] at 189–205. Petitioner also contemporaneously filed a "Motion to Accept Motion for Postconviction Relief as Timely Filed Nunc Pro Tunc to Original Date of Mailing and Leave to Amend Motion for Postconviction Relief." *See* Motion to Accept Postconviction Motion as Timely ("Timeliness Motion") [ECF No. 16-1] at 208–12. Petitioner's central argument in the Timeliness Motion was that he properly filed his original January 23, 2012 Motion but "was informed by the Clerk's office that there was no record of having received the motion." *Id.* at 209. In an abundance of caution, and with the express purpose of preserving the timeliness of a future federal habeas petition, Petitioner requested the state court to consider his most recent postconviction motion as timely filed as of January 23, 2012—and not May 16, 2013. *Id.* at 210–11. Based on the state court record provided by the Respondent, the Court cannot ascertain whether the state court ever explicitly ruled on the Timeliness Motion.[2]

After the state court subsequently ordered Petitioner to amend his postconviction motion, *see* Order Striking Motion for Postconviction Relief [ECF No. 16-1] at 244, Petitioner filed an Amended Motion for Postconviction Relief on November 15, 2013, *see* Amended Postconviction Motion [ECF No. 16-1] at 252–80. Petitioner's Amended Postconviction Motion contained three grounds for relief: (1) trial counsel was ineffective "for failing to sufficiently argue during a pre-trial motion to suppress that incriminating statements made by Young were not only the product of coercive police conduct, but were obtained after his initial detention became an unlawful arrest

[2] On July 26, 2019, Petitioner filed a Petition for Writ of Mandamus with the Fourth DCA requesting that the Fourth DCA order the state circuit court to "issue a ruling . . . [on his] motion to accept a timely filed nunc pro tunc to the original filing date[.]" Petition for Writ of Mandamus [ECF No. 16-3] at 89. The Fourth DCA ultimately dismissed the petition, concluding that the motion itself was moot "as the [trial] court granted leave to amend and ruled on the merits of the amended motion." Order Dismissing Petition [ECF No. 16-3] at 107.

without probable cause, and for failing to call available witnesses that would have provided crucial testimony regarding Young's apprehension by police," *id.* at 256; (2) trial counsel was ineffective "for failing to object" to the prosecutor's "insinuation" during closing arguments that Petitioner had confessed to his mother, *id.* at 266; and (3) trial counsel was ineffective "for failing to advise Young that the independent act doctrine was a viable and valid defense under the facts and circumstances of his case," *id.* at 271.

On August 22, 2019,[3] the State filed a Response to Petitioner's Amended Postconviction Motion. *See* State's Response [ECF No. 16-2] at 2–8. The State argued that the state court should summarily deny all three grounds of Petitioner's Amended Postconviction Motion. *Id.* at 8. That same day, the state court denied the Amended Postconviction Motion "for the reasons contained in the State's response[.]" Order Denying Amended Postconviction Motion [ECF No. 16-3] at 81. Petitioner appealed the denial of his Amended Postconviction Motion to the Fourth DCA. *See* Notice of Appeal [ECF No. 16-3] at 83–84. On February 20, 2020, the Fourth DCA again affirmed the state trial court in an unwritten opinion. *See Young v. State*, 291 So. 3d 951 (Fla. 4th DCA 2020). The Fourth DCA's mandate issued on March 20, 2020, *see* Postconviction Mandate [ECF No. 16-3] at 140, and the instant Petition was filed with the Court on June 1, 2020, *see* Pet. The Petition raises the three following claims:

1. **Ground One**: Trial counsel rendered ineffective assistance by "misadvising Petitioner that there was an arrest warrant; failing to file a motion to suppress incriminating statements made by Petitioner after an illegal arrest; and for failing to call available witnesses that would have provided crucial testimony regarding the illegal arrest and resulting interrogations." Pet. at 6.

2. **Ground Two**: Trial counsel was ineffective "for failing to advise Petitioner that the independent act doctrine was a viable and valid defense under the facts and circumstances of his case[.]" *Id.* at 12.

[3] There is no explanation in either the state court docket or Respondent's appendix as to why there was a delay of nearly six years before the State filed a Response to the Amended Postconviction Motion. *See generally* State Court Docket [ECF No. 16-1] at 2–5.

3. **Ground Three**: Trial counsel was ineffective for failing to object to the prosecutor's insinuation, without an evidentiary basis, that Petitioner "confessed to his mother[.]" *Id.* at 20.

STANDARD OF REVIEW

A. Review Under 28 U.S.C. § 2254

"As amended by [the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")], 28 U.S.C. § 2254 sets several limits on the power of a federal court to grant an application for a writ of habeas corpus on behalf of a state prisoner." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). Some of the more restrictive limits are found in § 2254(d). Under that provision, a federal court may grant habeas relief from a state court judgment only if the state court's decision on the merits was (1) contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States; or (2) was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d). Consequently, § 2254(d) constructs a "highly deferential standard for evaluating state-court rulings" because, after all, this standard "demands that state-court decisions be given the benefit of the doubt." *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002).

"A state court's decision is 'contrary to' federal law if the 'state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts.'" *Consalvo v. Sec'y, Fla. Dep't of Corr.*, 664 F.3d 842, 844 (11th Cir. 2011) (quoting *Williams v. Taylor*, 529 U.S. 362, 412–13 (2000)) (brackets omitted). A state court's decision qualifies as an "an unreasonable application of federal law if the state court identifies the correct governing legal principle from the Supreme Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id.* (quoting *Williams*, 529 U.S. at 413) (cleaned up).

"'If this standard [seems] difficult to meet'—and it is—'that is because it was meant to be.'" *Burt v. Titlow*, 571 U.S. 12, 20 (2013) (quoting *Harrington v. Richter*, 562 U.S. 86, 102 (2011)).

By its own plain terms, § 2254(d)'s deferential standard applies only when a claim "was adjudicated on the merits in State court proceedings[.]" 28 U.S.C. § 2254(d); *see also Cullen*, 563 U.S. at 181 ("If an application includes a claim that has been adjudicated on the merits in State court proceedings, § 2254(d), an additional restriction applies."); *Cone v. Bell*, 556 U.S. 449, 472 (2009) ("Because the Tennessee courts did not reach the merits of Cone's *Brady* claim, federal habeas review is not subject to the deferential standard that applies under AEDPA."). The summary denial of a claim with no articulated reasons presumptively serves as an adjudication on the merits subjecting the claim to § 2254(d)'s additional restrictions. *See Richter*, 562 U.S. at 100 ("This Court now holds and reconfirms that § 2254(d) does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'"). This is because federal courts ordinarily presume that § 2254(d)'s deferential standard applies when a constitutional claim has been presented to a state court and denied in that forum. *See, e.g.*, *id.* at 99 ("When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.").

At the same time, "federal court[s] should 'look through' [an] unexplained decision to the last related state-court decision that *does* provide a relevant rationale" if one exists. *See Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018) (emphasis added). From there, federal courts "presume that the unexplained decision adopted the same reasoning." *Id.* "[T]he State may rebut [that] presumption by showing that the unexplained affirmance relied or most likely did rely on different

grounds than the lower state court's decision, such as alternative grounds for affirmance that were briefed or argued to the state supreme court or obvious in the record it reviewed." *Id.*

In addition to the standard of review imposed by AEDPA, the petitioner must also show that any constitutional error had a "substantial and injurious effect or influence" on the verdict to be entitled to habeas relief. *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993). The Supreme Court has explained that, while the passage of AEDPA "announced certain new conditions to [habeas] relief," it did not supersede or replace the harmless error standard announced in *Brecht*. *Brown v. Davenport*, 142 S. Ct. 1510, 1524 (2022). In other words, a habeas petitioner must also satisfy *Brecht*, even if AEDPA applies. *See id.* ("[A] federal court must *deny* relief to a state habeas petitioner who fails to satisfy either [*Brecht*] or AEDPA. But to *grant* relief, a court must find that the petition has cleared both tests.") (emphasis in original); *see also Mansfield v. Sec'y, Dep't of Corr.*, 679 F.3d 1301, 1307 (11th Cir. 2012) ("[A] habeas petition cannot be successful unless it satisfies both [AEDPA] and *Brecht*.").

B. Ineffective Assistance of Counsel Claims

The Sixth Amendment affords a criminal defendant the right to "the Assistance of Counsel for his defen[s]e." U.S. Const. amend. VI. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To prevail on a claim of ineffective assistance of counsel, a habeas litigant must demonstrate "that (1) his counsel's performance was deficient and 'fell below an objective standard of reasonableness,' and (2) the deficient performance prejudiced his defense." *Raleigh v. Sec'y, Fla. Dep't of Corr.*, 827 F.3d 938, 957 (11th Cir. 2016) (quoting *Strickland*, 466 U.S. at 687–88).

Regarding the deficiency prong, "a petitioner must establish that no competent counsel would have taken the action that his counsel did take" during the proceedings. *Chandler v. United States*, 218 F.3d 1305, 1315 (11th Cir. 2000) (en banc). If "some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial[,]" counsel did not perform deficiently. *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995) (quoting *White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992)).

As for the second prong, "a defendant is prejudiced by his counsel's deficient performance if 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Porter v. McCollum*, 558 U.S. 30, 40 (2009) (quoting *Strickland*, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

PROCEDURAL REQUIREMENTS

A. Timeliness

Generally, "a person in custody pursuant to the judgment of a State court" has a one-year period to file a habeas corpus petition. *See* 28 U.S.C. § 2244(d)(1). The timeliness of the Petition was once in doubt, as Respondent originally contested whether Petitioner's first state postconviction motion was properly filed on January 23, 2012. *See* Order to Show Cause [ECF No. 14] at 1–2. Respondent now concedes that Petitioner's postconviction motion began to toll the limitations period on January 23, 2012, "meaning that only 189 days of untolled time passed between Petitioner's conviction becoming final and the filing of the instant Petition." *Id.* at 2; *see also* Response at 7 ("Thus, the Petition would be timely."). Since Respondent has waived any objection to the timeliness of the Petition, the Court will accept that waiver and consider the Petition timely. *See Day v. McDonough*, 547 U.S. 198, 210 n.11 (2006) ("[S]hould a state

intelligently choose to waive a statute of limitations defense, a district court would not be at liberty to disregard that choice.").

B. Exhaustion

Pursuant to 28 U.S.C. § 2254(b)–(c), habeas petitioners must exhaust their claims before presenting them in a federal habeas petition. *See Johnson v. Florida*, 32 F.4th 1092, 1096 (11th Cir. 2022) ("Plainly, the purpose of the exhaustion requirement is to afford the state court 'the opportunity to pass upon and correct alleged violations of its prisoners' federal rights.'") (quoting *Baldwin v. Reese*, 541 U.S. 27, 29 (2004)). This requirement is met if a petitioner "fairly present[ed] every issue raised in [their] federal petition to the state's highest court, either on direct appeal or on collateral review." *See Mason v. Allen*, 605 F.3d 1114, 1119 (11th Cir. 2010) (cleaned up). "If a petitioner fails to 'properly' present [their] claim to the state court—by exhausting [their] claims and complying with the applicable state procedure—prior to bringing [their] federal habeas claim, then [§ 2254] typically bars [courts] from reviewing the claim." *Id.* In other words, where a petitioner has not "*properly* presented his claims to the state courts," the petitioner will have "procedurally defaulted his claims" in federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999). "In Florida, exhaustion usually requires not only the filing of a [Florida Rule of Criminal Procedure 3.850] motion, but an appeal from its denial." *Nieves v. Sec'y, Fla. Dep't of Corr.*, 770 F. App'x 520, 521 (11th Cir. 2019) (quoting *Leonard v. Wainwright*, 601 F.2d 807, 808 (5th Cir. 1979)).

Similar to the limitations defense, a respondent also has the option to waive an exhaustion defense. *See* 28 U.S.C. § 2254(b)(3) ("A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement."). Here, Respondent concedes that both Grounds Two and

Three have been "arguably exhausted," so the Court will therefore review those two claims on the merits without further comment. *See Vazquez v. Sec'y, Fla. Dep't of Corr.*, 827 F.3d 964, 966 (11th Cir. 2016) ("States can waive procedural bar defenses in federal habeas proceedings, including exhaustion.") (cleaned up). However, Respondent also argues that Ground One is unexhausted and procedurally defaulted because the state court "decided [the claim] on independent and adequate state procedural grounds." Response at 9. Upon review, the Court concludes that Ground One can be denied on the merits, so it is in the interest of judicial economy to simply "skip over" a discussion of Ground One's alleged procedural deficiencies. *See Loggins v. Thomas*, 654 F.3d 1204, 1215 (11th Cir. 2011) ("When relief is due to be denied even if claims are not procedurally barred, [the court] can skip over the procedural bar issues.").

ANALYSIS

Turning to the substance of Petitioner's three claims, the Court must first distinguish its standards of review. Since Grounds Two and Three were exhausted and adjudicated on the merits in state court, this Court must apply the deferential standard of § 2254(d). As previously discussed, the Court must review the reasonableness of the factual findings and legal conclusions made by "the highest state court decision reaching the merits of a habeas petitioner's claim[.]" *Newland v. Hall*, 527 F.3d 1162, 1199 (11th Cir. 2008). In this case, the Fourth DCA was the highest court to adjudicate Grounds Two and Three. *See Young v. State*, 291 So. 3d 951 (Fla. 4th DCA 2020). Since the Fourth DCA merely affirmed the lower court in an unwritten opinion, the Court must "'look-through' the unexplained decision to the last related state-court decision that does provide a relevant rationale." *Wilson*, 138 S. Ct. at 1192. Unfortunately, the lower state postconviction court did not provide its own independent reasoning and instead adopted the reasoning of the State's Response to Petitioner's Amended Postconviction Motion. *See* Order Denying Amended

Postconviction Motion [ECF No. 16-3] at 81 ("[T]he Defendant's Motion for Post-Conviction Relief is hereby DENIED, for the reasons contained in the State's response[.]"). In this circumstance, the Court shall review the reasonableness of the State's Response as it is the presumptive reasoning of both the Fourth DCA and the state postconviction court. *See Benjamin v. Jones*, No. 17-cv-60855, 2018 WL 7288078, at *18 (S.D. Fla. Aug. 30, 2018) ("[T]he State's response is presumptively the reasoning of the [Fourth DCA]. This is because the [Fourth DCA] did not provide a written opinion, and, after looking through to the lower court, the trial court seems to have incorporated the State's rationale."), *report and recommendation adopted*, 2019 WL 180214 (S.D. Fla. Jan. 14, 2019).

Conversely, the Court must take a different approach with Ground One and review it *de novo*. While it is an exceedingly rare circumstance for a federal court to circumvent § 2254(d)'s standard of review, there are some limited exceptions. The statute itself permits *de novo* review when "a claim is properly presented to the state court, but the state court does not adjudicate it on the merits," *Mason*, 605 F.3d at 1119, or when a federal court determines that the state court's decision involved an unreasonable application of the facts or law, *see Adkins v. Warden, Holman CF*, 710 F.3d 1241, 1255 (11th Cir. 2013); *see generally* 28 U.S.C. § 2254(d). However, the Supreme Court has also recognized an additional exception: "Courts can, however, deny writs of habeas corpus under § 2254 by engaging in *de novo* review when it is unclear whether AEDPA deference applies, [and] the habeas petitioner will not be entitled to a writ of habeas corpus . . . on *de novo* review." *Berghuis v. Thompkins*, 560 U.S. 370, 390 (2010) (emphasis added). In other words, the Supreme Court has recognized an "'Occam's razor' approach" whereby the district court can dispense with a complicated review of a claim's procedural bar issues and instead review it *de novo*, but only when the "claim would fail on the merits in any event." *Dallas v. Warden*,

964 F.3d 1285, 1307 (11th Cir. 2020).[4] In sum, the Court will first conduct a *de novo* review of Ground One and then proceed to analyze Grounds Two and Three under AEDPA's standard of review.

A. Ground One

Ground One of the Petition advances three subclaims, all of which are related to a central conceit: trial counsel was ineffective for failing to suppress incriminating statements Petitioner made by arguing that they were taken in the wake of an illegal arrest. First, Petitioner contends that counsel "misadvised" Petitioner that he had been arrested with a valid arrest warrant—even though that was not true. *See* Pet. at 7. Second, Petitioner argues that his confession was the result of an illegal, warrantless arrest in violation of the Supreme Court's decision in *Dunaway v. New York*, 442 U.S. 200 (1979) and that counsel unreasonably failed to file a motion to suppress on that basis. *See id.* at 9 ("Counsel should have argued about facts in a motion to suppress [that Petitioner's] statements [were] made after an illegal arrest."). Third, Petitioner claims that counsel was ineffective for failing to call certain witnesses during his suppression hearing who could have purportedly testified about the illegality of Petitioner's arrest. *See id.* at 11 ("The failure to call these witnesses prejudiced the outcome of [the] trial because had the witnesses testified at the suppression hearing based on illegal arrest, Petitioner would not have been convicted."). The Respondent argues that defense counsel did file a motion to suppress which "addressed the subject of the illegal arrest" and that Petitioner failed to show he was prejudiced by any conceivable error. Response at 18–19.

[4] One more thing. Although the Court does not need to apply § 2254(d)'s standard when conducting a *de novo* review, Petitioner must still show that any alleged error had a "substantial and injurious effect or influence" on the verdict since the *Brecht* harmless error standard always applies on collateral review. *See Mansfield*, 679 F.3d at 1307 ("[A] habeas petition cannot be successful unless it satisfies both [AEDPA] and *Brecht*.").

If a defendant makes an inculpatory statement incident to an illegal arrest "the prosecution must show not only that the statements meet the Fifth Amendment voluntariness standard, but also that the causal connection between the statements and the illegal arrest is broken sufficiently to purge the primary taint of the illegal arrest[.]" *Dunaway v. New York*, 442 U.S. 200, 204 (1979). In Florida, a person cannot be arrested unless law enforcement has "probable cause that a crime has been or is being committed." *Golphin v. State*, 945 So. 2d 1174, 1180 (Fla. 2006). So long as law enforcement has probable cause, an arrest can be made without an arrest warrant provided the arrest takes place in a public location. *See State v. Ramos*, 378 So. 2d 1294, 1297 (Fla. 3d DCA 1979) ("Unlike the search of private premises, however, there is no constitutional requirement that a police officer obtain a search or arrest warrant before he may seize and search a person."). While a defendant can still make voluntary statements after an illegal arrest, the court must first ensure itself that the "taint" of the illegal arrest has dissipated by reviewing: (1) "the temporal proximity of the arrest and the confession," (2) "the presence of intervening circumstances," and (3) "the purpose and flagrancy of the official misconduct[.]" *Brown v. Illinois*, 422 U.S. 590, 603–04 (1975); *accord State v. Eubanks*, 588 So. 2d 322, 322 (Fla. 4th DCA 1991).

As an initial matter, the Court rejects Respondent's first argument as conclusively refuted by the state court record. Although Respondent avers that "counsel filed a motion to suppress that, while mainly arguing coercion, also addressed the subject of the illegal arrest[,]" the record does not support that argument. Response at 18. As Respondent concedes, defense counsel's primary argument was that "statements allegedly made by the Defendant should be excluded from evidence as inadmissible because they are the direct product of an interrogation conducted by the police while suspect was psychologically induced by police and/or in custody without having been adequately advised of his [rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966)]." Motion

to Suppress [ECF No. 16-2] at 11. The state trial court explicitly denied the motion to suppress on the basis that Petitioner did voluntarily waive his *Miranda* rights—there was no discussion about the legality of Petitioner's arrest. *See* Order Denying Motion to Suppress [ECF No. 16-2] at 22 ("Defendant's [*Miranda*] waiver was voluntary with a full awareness of the nature of the rights being abandoned and the consequences of their abandonment."). Although trial counsel alluded to an argument that "there [was] absolutely no physical evidence whatsoever that was gathered by law enforcement which links or tends to implicate the Defendant in the attempted robbery/shooting," the Court believes that this perfunctory reference was not sufficient to allege a constitutional violation pursuant to *Brown* or *Dunaway*. Arguments in Support of Motion to Suppress [ECF No. 16-2] at 14.

Nevertheless, the Court essentially agrees with Respondent's contention that a motion to suppress based on *Dunaway* would have been unsuccessful. Restated, the Court finds that counsel's performance (or lack thereof) in these matters had no "reasonable probability" of affecting the outcome of Petitioner's case. *See Strickland*, 496 U.S. at 694. As to the first subclaim, the presence of an arrest warrant was irrelevant and any "misadvice" about the existence of a warrant had no bearing on outcome of the case. Detective Berrena testified during the suppression hearing that Petitioner was picked up "off the street" and not from his home or another private location. Suppression Hr'g Tr. [ECF No. 17-2] at 8. Therefore, the lack of an arrest warrant, by itself, would not have made any arrest illegal. *See Ramos*, 378 So. 2d at 1297.

The second subclaim fails because *Dunaway* would not have been a valid basis to suppress Petitioner's statement. The Court will assume, without deciding, that Petitioner was under arrest from the moment Detective Berrena made contact with Petitioner.[5] The key issue, therefore, is

[5] Despite this assumption, there is ample evidence suggesting that Petitioner was not under arrest and that he voluntarily chose to cooperate with law enforcement. *See, e.g.*, Suppression Hr'g Tr. [ECF No. 17-2] at

whether law enforcement had "probable cause" at the time of Petitioner's arrest which would allow "a reasonable person to believe that an offense [had] been committed and that the defendant committed it[;]" if not, then the arrest would have been illegal. *Walker v. State*, 741 So. 2d 1144, 1145 (Fla. 4th DCA 1999). Prior to the "arrest," Detective Berrena had been informed by "two eyewitnesses that stated they could identify the shooter and the non-shooter[,]" and that Benjamin Sanders—Petitioner's codefendant—"was positively identified as the shooter." Suppression Hr'g Tr. [ECF No. 17-2] at 8. Detective Berrena also received tips via the "Crime Stoppers" tip-line that Mr. Sanders and Petitioner were the two individuals involved in the shooting. *See id.* ("We received numerous Crime Stopper tips, and we placed the individuals given to us in Crime Stoppers in photo lineups. . . . And we also received through Crime Stoppers [Benjamin Sanders's] name as well as Rufus Young's name."). Detective Berrena also clarified that although "different people" had reported that Petitioner was involved via Crime Stoppers, he knew the identity of at least one of the tipsters. *See id.* at 21 ("Q: Well, are you telling us you do know the name? A: I know one name, yes. Q: Who gave you Rufus Young? Who gave you the name Rufus Young? A: Yes."). Detective Berrena admitted that, at the time of the arrest, "[t]here was no physical evidence . . . that linked Mr. Young to that shooting[.]" *Id.* at 23.

Based on Detective Berrena's testimony during the suppression hearing, the Court concludes that he possessed the following information prior to Petitioner's arrest: (1) there were two suspects involved in the armed robbery/shooting; (2) multiple, anonymous tipsters identified Benjamin Sanders and Rufus Young as the two perpetrators; (3) one of the anonymous tipsters

26 ("[Detective Berrena]: I talked to [Petitioner], requested that he come to the office so we could talk. He was very agreeable, he was polite, yes."); *cf. United States v. Mendenhall*, 446 U.S. 544, 557–58 (1980) (finding no unlawful arrest or seizure where a suspect "was simply asked if she would accompany the officers" and no "threats [or] any show of force" occurred). However, the Court will give Petitioner the benefit of the doubt here since his claim fails in any event.

who claimed that Petitioner was involved was identified by Detective Berrena; and (4) Benjamin Sanders was positively identified as the shooter—partially vindicating the tipsters who had said that both Sanders and Petitioner were involved. All of this was sufficient to establish probable cause. It's true that an anonymous tip, by itself, cannot establish probable cause, but the Supreme Court has clearly held that a tip with sufficient corroboration can meet that standard. *See Illinois v. Gates*, 462 U.S. 213, 242 (1983) ("[I]n making a warrantless arrest an officer may rely upon information received through an informant, rather than upon his direct observations, so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge.") (internal quotations and citation omitted).

Detective Berrena was able to sufficiently corroborate these numerous anonymous tips in two ways. First, Detective Berrena knew the identity of at least one of the tipsters—this meant that the tipster qualified as a "citizen-informant" whose "information is at the high end of the tip-reliability scale." *State v. Evans*, 692 So. 2d 216, 219 (Fla. 4th DCA 1997). Second, and more importantly, law enforcement was able to corroborate "significant aspects of the informant's prediction." *Lee v. State*, 868 So. 2d 577, 580–81 (Fla. 4th DCA 2004). Recall that the tipster identified both Benjamin Sanders and Petitioner as the two persons involved in the shooting; thus, once part of the tip was confirmed to be true, it was reasonable for law enforcement to believe that the identification of Petitioner was also reliable. *See also, e.g.*, *Gates*, 462 U.S. at 245–46 (holding that an anonymous letter provided probable cause to arrest the defendant since the letter accurately detailed the defendant's travel plans); *Watkins v. Session*, No. 19-60810-CIV, 2021 WL 663762, at *9 n.3 (S.D. Fla. Feb. 19, 2021) ("An anonymous caller reported that someone was urinating in the park. . . . [T]he Officers arguably corroborated the anonymous caller's account of a man urinating in a park by finding Watkins alone in the park beside a cardboard box that appeared to

be covered in urine."); *Luke v. Gulley*, No. 19-CV-122, 2022 WL 300968, at *7–8 (M.D. Ga. Jan. 19, 2022) ("The tip also identified other suspects present at the shooting, the presence of whom was corroborated by the confidential informant and the arrest of others identified by the confidential informant. . . . A reasonable officer in the same circumstances and possessing the same knowledge as Defendant reasonably could have believed there was probable cause to arrest Plaintiff."). Because Detective Berrena had probable cause to arrest Petitioner, it would have been futile for defense counsel to argue that *Dunaway* applied.

Finally, Petitioner has failed to allege that he was prejudiced by the failure to call additional witnesses during the suppression hearing. As the Court just explained, law enforcement had probable cause to arrest Petitioner; therefore, it would have been pointless for any witness to testify about the circumstances or legality of Petitioner's arrest. *See Nelson v. State*, 875 So. 2d 579, 583 (Fla. 2004) (holding that, to prove prejudice, a defendant must show "how defense counsel's failure to call, interview, or present the witnesses who would have so testified prejudiced the case"). To conclude, law enforcement had probable cause to arrest Petitioner for his involvement in an attempted robbery/shooting. For that reason, defense counsel could not have been ineffective for failing to file a motion to suppress based on the premise that Petitioner's inculpatory statements were the fruit of an illegal arrest. *See Freeman v. Att'y Gen.*, 536 F.3d 1225, 1233 (11th Cir. 2008) ("A lawyer cannot be deficient for failing to raise a meritless claim."). Accordingly, the Court DENIES Ground One.

B. Ground Two

Petitioner argues in Ground Two of the Petition that trial counsel was ineffective for failing to advise Petitioner about the applicability of the "independent act doctrine." Pet. at 12. According to Petitioner, he was willing to plead guilty to the robbery counts because he and the codefendant

collectively planned to rob individuals by "merely displaying a BB gun," but he wanted to rely upon an independent act defense to contest the murder charge since "he had no knowledge that any of the victims would be approached using a real gun." *Id.* at 12–13. Trial counsel purportedly told Petitioner that the "independent act theory does not exist" and instead relied upon an alibi defense at trial. *Id.* at 13. Petitioner now posits that the result of his trial would have been different if defense counsel had used and relied upon the independent act doctrine. *Id.* at 14.

Respondent has presented three arguments in opposition: (1) defense counsel did attempt to instruct the jury on the independent act doctrine as an alternative basis to acquit Petitioner but "the trial court refused to give it;" (2) counsel's decision to rely on an alibi defense was a reasonable strategic decision because, unlike the independent act doctrine, Petitioner would not have to admit that he was guilty of the robbery counts; and (3) the independent act doctrine was inconsistent with his own trial testimony. Response at 23–25.

The "independent act doctrine" is a defense under Florida law that is available to a defendant who "previously participated in a common plan" with another codefendant. *Ray v. State*, 755 So. 2d 604, 609 (Fla. 2000). The defendant is allowed to argue that he or she is not responsible for actions "which exceed[ed] the scope of the original plan" agreed upon by the other codefendants. *Id.*; *see, e.g.*, *McGee v. State*, 792 So. 2d 624, 626 (Fla. 4th DCA 2001) ("Where there is evidence from which a jury could determine that the acts of the co-felon resulting in the murder were independent of the underlying felony, a defendant is entitled to an independent act instruction."). Of course, the independent act doctrine is a unique defense since it ultimately requires the defendant to, at least partially, admit guilt. *See, e.g.*, *Jardin v. Sec'y, Dep't of Corr.*, 543 F. Supp. 3d 1241, 1263 (M.D. Fla. 2021) (applying the independent act doctrine to burglary, robbery, and murder charges where "the underlying felony was the purchase of drugs, to which

Jardin readily concedes—insists on—his guilt"). Notably, the independent act doctrine does not apply when "the defendant was a willing participant in the underlying felony and the murder resulted from forces which they set in motion." *Ray*, 755 So. 2d at 609; *see also Washington v. State*, 873 So. 2d 1268, 1270 (Fla. 4th DCA 2004) ("For a felony murder conviction, the defendant's presence during the killing is unnecessary; the critical fact is his or her participation in the underlying felony.").

Ultimately, the Court finds that the state court reasonably applied *Strickland* in denying Ground Two since counsel did not perform deficiently. The independent act doctrine would have required Petitioner to admit that he was guilty of the four attempted armed robbery offenses charged in the Indictment—which could have subjected Petitioner to a maximum sentence of sixty (60) years in prison. *See* Fla. Stat. § 812.13(2)(a) ("If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree[.]"); Fla. Stat. § 777.04(4)(c) ("If the offense attempted . . . is a life felony or a felony of the first degree, the offense of criminal attempt . . . is a felony of the second degree punishable [by a term of imprisonment not exceeding 15 years].").[6]

A successful alibi defense, on the other hand, would have exonerated Petitioner of every charge against him in the Indictment. Suffice to say, it was eminently reasonable for defense counsel to choose a defense which applied universally instead of a more limited defense which would have required Petitioner to admit a significant amount of culpability. *See Johnson v.*

[6] Petitioner could make the argument that he did not possess "a firearm or deadly weapon" because he now claims that he used a BB gun during the robberies, meaning that his overall sentence could be lower. Pet. at 12. But this argument would be unpersuasive for two reasons. First, Petitioner now admits that his codefendant possessed a firearm during the attempted robberies—*i.e.*, Petitioner concedes that a firearm was used during the attempted robbery. *Id.* at 12–13. Second, Florida courts also have recognized that a BB gun can be considered a "deadly weapon." *See Dale v. State*, 703 So. 2d 1045, 1047 (Fla. 1997) ("Florida's district courts have overwhelmingly concluded that a BB or pellet gun can be a deadly weapon[.]").

Alabama, 256 F.3d 1156, 1177, 1180–81 (11th Cir. 2001) (holding that defense counsel made a reasonable strategic decision to advance a defense that the petitioner "was not present at the crime scene" rather than a defense "based upon [the petitioner's] lack of intent to kill and his non-participation in the murder"). Although the alibi defense was (obviously) unsuccessful at trial, counsel's decision was still a reasonable strategy since there was evidence at trial supporting Petitioner's alibi. *See id.* at 1180 ("Given the evidence available at the time and Johnson's own admissions, the strategy actually chosen by trial counsel—a 'Johnson was not there' defense—was reasonable. Although the evidence tying Johnson to the scene of the crime was persuasive, it still was circumstantial and not wholly iron-clad.").

In addition, it was also reasonable for the state court to conclude that counsel would have found an independent act defense to be futile. For one thing, Petitioner's sworn testimony at trial completely contradicted an independent act defense since he claimed that he was with a girl and not with the codefendant at the time of the robbery. *See* Trial Tr. [ECF No. 17-1] at 1409–15. Naturally, counsel could not have presented a defense that contradicted the sworn testimony of their own client. *See Williamson v. Moore*, 221 F.3d 1177, 1180 (11th Cir. 2000) (holding that defense counsel properly rejected a self-defense argument since it "was inconsistent with Petitioner's own description of the killing.").[7] Even more important, however, is that the state

[7] In his Reply, Petitioner appears to backpedal from his own trial testimony by claiming that, had defense counsel informed him about the independent act doctrine, he "could have opted to not testify and let the evidence speak for itself[.]" Reply at 7. While it is certainly conceivable that Petitioner might not have testified if counsel pursued an independent act defense, he cannot now disclaim his sworn trial testimony to the contrary in such an obviously self-serving manner. *See Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) ("[T]he representations of the defendant . . . constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity."); *Robinson v. Sec'y, Fla. Dep't of Corr.*, No. 19-cv-1013, 2022 WL 1155296, at *6 (M.D. Fla. Apr. 18, 2022) ("Petitioner faces the formidable barrier of his sworn testimony . . . . [H]is attempt to go behind his previously sworn testimony is not well received."). As Respondent astutely summarized, "[e]ither Petitioner is now asserting he committed perjury during trial, or he is arguing that he should have been permitted to commit perjury to advance a theory he asserted was a lie during his trial testimony[.]"

postconviction court—in adopting the State's Response—concluded that the independent act doctrine did not apply. *See* State's Response [ECF No. 16-2] at 7 ("Since there was no basis to have an independent act instruction granted, relief must be summarily denied."). Although this Court has the power to review a state court's interpretation and application of federal law, it cannot second-guess a state court's application of state law. *See McCullough v. Singletary*, 967 F.2d 530, 535 (11th Cir. 1992) ("A state's interpretation of its own laws or rules provides no basis for federal habeas corpus relief, since no question of a constitutional nature is involved."). The state court concluded that the independent act doctrine did not apply under state law, and this Court cannot second-guess that dispositive legal conclusion.[8] Thus, for all of the foregoing reasons, the Court DENIES Ground 2.

C. Ground Three

Petitioner's final ground for relief is that counsel performed ineffectively by failing to object to the prosecutor's insinuation that Petitioner confessed to his mother—even though there was no evidence to support the prosecutor's claim. *See* Pet. at 16–18. Petitioner argues that the prosecutor's statement was prejudicial, as it allowed the jury to infer that he confessed to both law enforcement and his mother. *See id.* at 19 ("A prosecutor may not insinuate an incriminating

Response at 25. In short, the Court cannot ignore Petitioner's own sworn testimony at trial in order to support the viability of his habeas claim.

[8] The Court would note, for the sake of completeness, that its review of Florida law supports the state court's conclusion that the independent act doctrine does not apply. Specifically, Florida's district courts of appeal have uniformly held that the death of a victim is a reasonably foreseeable circumstance of willingly participating in armed robberies with a firearm or deadly weapon. *See, e.g., Washington*, 873 So. 2d at 1270 ("A shooting that occurs during an armed robbery does not exceed the scope of the armed robbery so that an independent act instruction is required."); *Roberts v. State*, 4 So. 3d 1261, 1264 (Fla. 5th DCA 2009) ("[A]n independent act instruction is inappropriate when the unrebutted evidence shows the defendant knowingly participated in the underlying criminal enterprise when the murder occurred or knew that firearms or deadly weapons would be used."); *see also supra* note 6 (citing state law for the proposition that a BB gun can be a "deadly weapon" under Florida law). The Court emphasizes, however, that its own survey of state court precedent does not supersede the state court's dispositive conclusions of state law.

admission into cross-examination without a good faith basis the fact insinuated is true."). Respondent, in turn, adopts the state court's reasoning that there was evidence Petitioner told his mother that he "manned up," and the prosecutor reasonably inferred this statement was akin to a confession. *See* Response at 29 ("The statements at issue in closing were based on testimony admitted at trial, consequently, the comments were permissible."); State's Response [ECF No. 16-2] at 6 ("The comments of the prosecutor noted were fair comment on the fact that the defendant admitted to confessing to his mother about committing the crime[.]").

Both federal and Florida law provide a prosecutor with considerable leeway when he or she presents a closing argument to the jury. *See Tucker v. Kemp*, 762 F.2d 1496, 1506 (11th Cir. 1985) ("[A] prosecutor may argue both facts in evidence and reasonable inferences from those facts."); *Breedlove v. State*, 413 So. 2d 1, 8 (Fla. 1982) ("Wide latitude is permitted in arguing to a jury. Logical inferences may be drawn, and counsel is allowed to advance all legitimate arguments.") (cleaned up). A prosecutor's arguments do not require a mistrial unless the comments made are so egregious that they "deprive the defendant of a fair and impartial trial, materially contribute to the conviction, be so harmful or fundamentally tainted as to require a new trial, or be so inflammatory that they might have influenced the jury to reach a more severe verdict than it would have otherwise." *Jones v. State*, 998 So. 2d 573, 589 (Fla. 2008) (cleaned up). An example of an improper argument is when the prosecutor "insinuate[s] impeaching facts that were not supported by any evidence and that were not corroborated by actual impeachment." *Braddy v. State*, 111 So. 3d 810, 853 (Fla. 2012); *see also, e.g.*, *Evans v. State*, 177 So. 3d 1219, 1233 (Fla. 2015) ("Therefore, the prosecutor's insinuations arguably left the jury with the damaging impression that Evans stalked Beth and was so obsessed with her that he hired a private investigator to acquire information about her new boyfriend. This line of questioning, which was not supported

by any evidence, was improper."), *overruled on other grounds by Johnson v. State*, 252 So. 3d 1114, 1115 (Fla. 2018).

As the Court sees it, the gravamen of Ground Three is whether there was sufficient evidence adduced at trial to allow the prosecutor to make the following argument:

> On the backside of the tape with the mother and detective when he confessed—I am not saying he went into detail—he told his mother, "I manned-up." He confirmed it. It is only later on he says it to the mother.

Trial Tr. [ECF No. 17-1] at 1517–18. While both parties agree that the prosecutor is referring to a video-taped statement made by Petitioner, Petitioner and Respondent, predictably, have completely divergent viewpoints on what Petitioner said in the statement. Petitioner claims that he "did not confess in that recording. . . . What the tape recorded statement actually reveals [is that] Petitioner told his mother that [Detective] Berrena said, 'Ben [Sanders] told me you did it. He manned up.'" Pet. at 19. Petitioner also denied making that statement during the trial itself. *Id.* at 18 ("Q: Did you tell your mother, when you saw it, 'Mom, that's me?' Isn't that what the detective is asking you about? A: No. I don't remember ever hearing something like that.") (quoting Trial Tr. [ECF No. 17-1] at 1433–34). Respondent argues that Detective Berrena specifically testified that "Petitioner told his mother that the co-defendant had manned up, so he did, as well, or something similar to that." Response at 27.

In denying Ground Three, the state postconviction court found that Detective Berrena testified that Petitioner made statements to his mother "about 'manning up' to the crime" and that Petitioner himself "confessed to his mother that he was involved in the shooting." State's Response [ECF No. 16-2] at 6. Therefore, Ground Three requires this Court to review the reasonableness of the state postconviction court's "determination of facts" rather than its application of the law. 28 U.S.C. § 2254(d)(2). Under AEDPA, the Court must assume that the

state court's determination of a factual issue is correct; Petitioner has "the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *see also Green v. Sec'y, Dep't of Corr.*, 28 F.4th 1089, 1147–48 (11th Cir. 2022) ("A state court's findings on subsidiary factual questions are entitled to § 2254(e)(1)'s presumption of correctness. This is true even when the factual findings are merely implicit.") (cleaned up).

Upon review of the state court record, the Court concludes the state court reasonably found that there was sufficient testimony at trial to allow the prosecutor to infer that Petitioner confessed to his mother. When discussing Petitioner's video-taped statement, Detective Berrena conceded that he could not recall exactly what Petitioner told his mother, but he did specifically remember that "he told her he 'manned-up.'" Trial Tr. [ECF No. 17-1] at 1200–01. Petitioner himself also agreed that he told his mother that he was "involved" in the attempted robbery. *See id.* at 1428 ("Q: Did you ever confess and tell your mother you were involved in this shooting, this attempted robbery? A: I confessed to her what I did."). Based on these two statements, the jury could easily infer that Petitioner told his mother: (1) that he "manned-up," and (2) that he was "involved" in the attempted robbery. Under Florida's permissive closing argument standard, it was perfectly reasonable for the prosecutor to infer or insinuate that Petitioner's use of the phrase "manned-up" was part of his confession that he was "involved" in the attempted robbery. *See Miller v. State*, 926 So. 2d 1243, 1254–55 (Fla. 2006) ("[A]n attorney is allowed to argue reasonable inferences from the evidence and to argue credibility of witnesses or any other relevant issue so long as the argument is based on the evidence.").

While Petitioner correctly argues that there was other evidence at trial contradicting the prosecutor's interpretation, *see* Pet. at 19, it is the province of the jury to believe or disbelieve testimony as well as accept or reject closing arguments based on their views of the evidence, *see*

United States v. Iglesias, 915 F.2d 1524, 1529 (11th Cir. 1990) ("The sole purpose of closing argument is to assist the jury in analyzing the evidence. . . . [A]ny prejudice was cured by the court's instructions to the jury that it should rely on its own recollection rather than the recollections of the attorneys."). Because the state court reasonably concluded that there was factual evidence to support the prosecutor's closing argument, its conclusion that any objection to the propriety of the prosecutor's closing argument would have been meritless is also reasonable. *See Jardin*, 543 F. Supp. 3d at 1276 ("Because an objection would not have succeeded, the state court did not unreasonably apply *Strickland*."). Ground Three is therefore DENIED.

EVIDENTIARY HEARING

No evidentiary hearing is warranted in this matter. *See Shriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the [state court] record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

CERTIFICATE OF APPEALABILITY

After careful consideration of the record in this case, the Court declines to issue a certificate of appealability ("COA"). A habeas petitioner has no absolute entitlement to appeal a district court's final order denying his habeas petition. Rather, to pursue an appeal, a petitioner must obtain a COA. *See* 28 U.S.C. § 2253(c)(1); *Harbison v. Bell*, 556 U.S. 180, 183 (2009).

Issuance of a COA is appropriate only if a litigant makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, litigants must show that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). And "[w]here a district court has disposed of claims . . . on procedural grounds, a COA will be granted only if the court concludes that 'jurists of reason' would find it debatable both 'whether the petition states a valid claim of the

denial of a constitutional right' and 'whether the district court was correct in its procedural ruling.'" *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001) (quoting *Franklin v. Hightower*, 215 F.3d 1196, 1199 (11th Cir. 2000)).

Here, reasonable jurists would not debate the correctness of the Court's denial of Grounds One, Two, or Three. Accordingly, a COA must be denied on all claims.

CONCLUSION

Having carefully reviewed the record and governing law, it is hereby

ORDERED AND ADJUDGED that the Petition [ECF No. 1] is **DENIED**. Any request for a certificate of appealability is **DENIED**, and an evidentiary hearing is **DENIED**. All deadlines are **TERMINATED**, and any pending motions are **DENIED** as moot. Accordingly, this case is **CLOSED**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 20th day of July, 2022.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

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IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

RUFUS YOUNG,

Defendant.
_____/

CASE NO.05-739CF10A

DIVISION: FP

JUDGE: MICHAEL A. USAN

ORDER ON DEFENDANT'S MOTION FOR POST CONVICTION RELIEF

THIS CAUSE having come on to be heard upon the Defendant's Motion for Post-Conviction Relief, pursuant to Fla.R.Crim.P. 3.850, and the Court having considered same, and being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that the Defendant's Motion for Post-Conviction Relief is hereby **DENIED**, for the reasons contained in the State's response, a copy of which is filed electronically and incorporated herein by reference.

The defendant has thirty (30) days from the date of rendition of this Order to file an appeal.

DONE AND ORDERED on this 22 day of August, 2019, in Chambers, Fort Lauderdale, Broward County, Florida.

MICHAEL A. USAN
Circuit Court Judge

Copies furnished:
State Attorney's Office – Joel Silvershein, Esq.
Defendant – Rufus Young, DC#L71816

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13319

RUFUS YOUNG,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:20-cv-61074-RAR

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before JILL PRYOR, NEWSOM, and DUBINA, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

STATE OF FLORIDA)	CASE NO: 05-739 CF10A
)	
)	JUDGE: USAN
)	
v.)	
)	
RUFUS YOUNG)	
)	
Defendant)	

RESPONSE TO DEFENDANT'S MOTION FOR

POST-CONVICTION RELIEF

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and responds to the Defendant's Motion for Post-Conviction Relief, pursuant to Fla.R.Crim.P. 3.850 and the Order of this Honorable Court, as follows:

1. The allegation of the defendant that trial counsel, Jonathan Friedman, was ineffective for failing to sufficiently argue a motion to suppress is without merit. Counsel did file a motion to suppress (Exhibits I and II), which was heard and denied by the Court (Exhibits III). Additionally, counsel objected to the admission of the statement and renewed his motion prior to the admission of the statement, consequently, preserving the issue for appeal (Exhibit IV, p. 1087). Appellate counsel raised the issue as

the first ground for appeal, including the argument based on *Dunaway v. New York* (Exhibit V, pp. 11-25), which was addressed on the merits by the State (Exhibit VI, pp. 2-10). The ruling of the Court was affirmed by the Fourth District Court of Appeal when the case was affirmed (Exhibit VII). Although there was a procedural argument regarding the preservation of the issue of unlawful arrest (Exhibit VI, pp. 2-3), the State extensively addressed the merits of the argument in the brief (Exhibit VI, pp. 3-7). The fact that the Fourth District Court of Appeal simply affirmed with an opinion means that the appellate court reviewed all points of error raised by the defendant on its merits and rejected it. *Shayne v. Saunders*, 176 So. 495 (Fla. 1937). The State also relies on the arguments made by the Attorney General in the answer brief on this ground (Exhibit VII). Because the merits of the argument were considered by the appellate court, and there is nothing in the opinion which reflects that the issue was not preserved, this ground must be summarily denied.

Notwithstanding the procedural argument, there was neither a deficiency on the part of counsel, nor prejudice to the defendant. As previously noted, counsel did file and preserve for review a motion to suppress the statement (Exhibit IV, p. 1087). Additionally, there was no prejudice where counsel attacked the voluntariness in his cross-examination of Detective Berrena (Exhibit IV), and in closing argument in his attempt to have the

jury agree that the statement to law enforcement constituted a false confession (Exhibit VIII, pp. 1489-1510). Since counsel preserved the issue of a motion to suppress for appeal, which was addressed on the merits, and the record otherwise refutes the allegation of the defendant, this claim must be summarily denied.

2. The allegation of the defendant that trial counsel was ineffective in failing to call alleged witnesses at the motion to suppress is without merit. Initially, the decision to call witnesses other than the defendant is a matter of trial strategy, which is not subject to a claim of ineffective assistance of counsel. *Puglisi v. State*, 112 So.3d 1196 (Fla. 2013). Regardless, the claim of the defendant is legally insufficient under *Nelson v. State*, 875 So.2d 579 (Fla. 2004), because the defendant does not note the availability of the alleged witnesses to testify at the motion to suppress or at trial. It should also be noted that the witnesses noted by the defendant were never put on the defense witness list (Exhibit IX), and the names noted by the defendant were never mentioned during a motion for continuance based on the defendant telling counsel about potential witnesses in the case (Exhibit X). The allegations that witnesses could testify about the conduct of the police and number of police do not establish a ground for relief under *Dunaway v. New York*, and are general in nature. Additionally, the claim regarding Debra Young does not establish a basis for relief, where she was not present at the time

the defendant voluntarily accompanied Detective Berena and Detective Koos to the Broward Sheriff's Office. Furthermore, the claims regarding ineffective assistance are legally insufficient, because the defendant fails to detail the nature of the testimony, whether the witness was available to testify, and why the failure to call these alleged witnesses constituted ineffective assistance of counsel[1].

3. The allegation of the defendant that trial counsel was ineffective as alleged in ground two of the motion, is also without merit. Initially, this issue was raised on appeal (Exhibit V, pp. 26-37), addressed on the merits by the State (Exhibit VI, pp. 10-16), and rejected on by the Fourth District Court of Appeal when it affirmed the judgment and sentence in this matter (Exhibit V). The fact that the Fourth District Court of Appeal simply affirmed means that the appellate court reviewed all points of error raised by the defendant on its merits and rejected it. *Shayne v. Saunders*, *supra*. Consequently, this issue is not cognizable in a motion for post-conviction relief. *Koon v. Dugger*, 619 So.2d 246 (Fla. 1993); *Medina v. State*, 573 So.2d 293 (Fla. 1990).

Regardless, Detective Berrena testified that the mother of the

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[1] The first motion for post-conviction was struck pursuant to *Spera v. State*, 971 So.2d 754 (Fla. 2007) based on the insufficiency of the claim. The same insufficiencies noted in the motion to strike still exist. Because the defendant was given an opportunity to correct the deficiencies, the Court has the ability to deny the claim. *Id.*

defendant came to the station, and the defendant told his mother what happened (Exhibit IV, p. 1135). On cross-examination of Detective Berrena, counsel inquired of the statements made by the defendant to his mother about "manning up" to the crimes (Exhibit IV, pp. 1200-1202). Additionally, during the direct examination of the defendant, counsel brought out the fact that the defendant confessed to his mother that he was involved in the shooting (Exhibit XI, p. 1428). Consequently, the State had the ability to further inquire about the statements the defendant made to his mother (Exhibit XI, p. 1433-1434). F.S. § 90.612(2).

As to closing arguments, it is well established that a considerable degree of latitude is allowed in closing argument, and that all logical inferences and deductions from the evidence are permissible. *Breedlove v. State*, 413 So.2d 1 (Fla. 1982); *Thomas v. State*, 326 So.2d 413 (Fla. 1975). The comments of the prosecutor noted (Exhibit VIII, pp. 1486, 1517-1518) were fair comment on the fact that the defendant admitted to confessing to his mother about committing the crime, and then stating in his testimony that he lied about being involved in the crimes in this matter (Exhibit XI). It was also fair comment on the closing argument of the defendant regarding the conversation between the defendant and his mother at the police station (Exhibit VIII, pp. 1497-1498). Since the comments were within the bounds of *Breedlove*, relief must be summarily denied.

4. The allegation of the defendant that trial counsel was ineffective for not proceeding with an independent act defense is without merit. Counsel did ask for an independent act instruction, which was rejected by the Court. (Exhibit XII). Since the issue was or could have been raised on appeal, relief must be summarily denied. *Koon, supra; Medina, supra.*

Regardless, the doctrine of independent act arises from circumstances where, after participating in a common plan or design, one co-felon does not participate in acts, committed by another co-felon, which fall outside of, and are foreign to, the common design of the original collaboration. *Dell v. State*, 661 So.2d 1305 (Fla. 3d DCA 1995). See also *Beasley v. State*, 774 So.2d 649 (Fla. 2000); *Ray v. State*, 755 So.2d 644 (Fla. 2000); *Suarez v. State*, 795 So.2d 1049 (Fla. 4th DCA 2001). An independent act instruction was not warranted, because the defense in this matter was that the defendant was not present at the time of the robbery and murder, and that his statements regarding his involvement was a false confession (Exhibits VIII, pp. 1489-1510; Exhibit XI). *Lovette v. State*, 636 So.2d 1304 (Fla. 1994); *Perez v. State*, 711 So.2d 1215 (Fla. 3d DCA 1998). Since there was no basis to have an independent act instruction granted, relief must be summarily denied.

WHEREFORE, the State of Florida respectfully requests this Honorable Court to deny the Defendant's Motion for Post-Conviction Relief.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to Rufus Young, Defendant, Pro Se, Inmate #L71816, Dade Correctional Institution, 19000 S.W. 377th Street, Florida City, Florida 33034-6409, this 22nd day of August, 2019.

MICHAEL J. SATZ
State Attorney

By: _____

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