

In the
Supreme Court of the United States

Jimmy Fletcher Meders,
Petitioner,

v.

Warden, GDCP,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals' decision, specifically reviewing the state court's reasons for denying Meders' ineffective-assistance claim but refusing to "flyspeck" or "grade" the state court's opinion, conflicts with *Wilson v. Sellers*, ___, U.S. ___, 138 S. Ct. 1188 (2018).
2. Whether the state court unreasonably applied *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984) when it determined that Meders failed to prove prejudice for his guilt phase ineffective-assistance claim because after "carefully considering" his new evidence challenging his convictions, there still remained "overwhelming" evidence of his guilt.

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OPINIONS BELOW

The decision of the Georgia Supreme Court in the first criminal direct appeal is published at 260 Ga. 49, 389 S.E.2d 320 (1990).

The decision of the trial court on remand from the Georgia Supreme Court is not published but is included in Petitioner's Appendix B.

The decision of the Georgia Supreme Court in the second criminal direct appeal is published at 261 Ga. 806, 411 S.E.2d 491 (1992).

The decision of the district court denying federal habeas relief is published at 2014 U.S. Dist. LEXIS 113816 (S.D. Ga. 2014).

The decision of the Eleventh Circuit Court of Appeals affirming the district court's denial of relief is published at 911 F.3d 1335 (11th Cir. 2019) and is included in Petitioner's Appendix A.¹

JURISDICTION

The Eleventh Circuit Court of Appeals entered its judgment in this case on March 4, 2019. On May 13, 2019, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including August 1, 2019, and the petition was timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to a ... have the Assistance of Counsel for his defence.

¹ The pages of Petitioner's Appendix A are not numbered, therefore Respondent cites to the published opinion in the Federal Reporter.

The Fourteenth Amendment, Section I, of the United States

Constitution provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law

28 U.S.C. § 2254(d) provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

Petitioner Jimmy Fletcher Meders seeks factbound error correction of his *Strickland* claim, which is not worthy of this Court’s certiorari review.

Meders tries, but fails, to manufacture a conflict with courts applying this Court’s decision in *Wilson v. Sellers*, ___, U.S. ___, 138 S. Ct. 1188 (2018). He argues that the court of appeals flouted this Court’s instruction in *Wilson* to “train its attention on the particular reasons” given by the state court by holding it would not “flyspeck” or “grade” the state court’s opinion. But *Wilson* only addressed which state court opinion to review when the last court opinion is silent and there is a reasoned state court decision below. *Wilson* did not suggest, much less hold, that a federal court must “flyspeck”

or “grade” a state court opinion. This type of review would be contrary to this Court’s precedent and the AEDPA. Just as important, the court of appeals examined the state court’s reasons and determined they were supported by the record and this Court’s precedents. The court of appeals did not step outside the bounds of a proper § 2254(d) review.

Meders’ petition thus reduces to a request for this Court to conduct error correction of a factbound *Strickland* claim, and one that lacks merit.

STATEMENT

A. Facts of the Crimes

Briefly, the facts at trial, which will be explained further below, showed Meders shot and killed Don Anderson, the clerk of the Marshes of McKay Jiffy Store around 2:35 a.m. on October 14, 1987. *Meders v. State*, 260 Ga. 49, 49, 389 S.E.2d 320, 320-21 (1990) (*Meders I*). There was an eyewitness who identified Meders as the shooter, and Meders was found to be in possession of the murder weapon and the bait money taken from the cash register of the Jiffy Mart. *Id.*

B. Proceedings Below

1. Trial Proceeding

On April 7, 1989, following a jury trial, Meders was convicted of malice murder and armed robbery. *Meders I*, 260 Ga. at 49. Following the sentencing phase of trial, the jury found the existence of two statutory aggravating circumstances: 1) that the offense of murder was committed while Meders was engaged in the commission of armed robbery; and 2) that Meders committed the offense of murder for himself or another for the

purpose of receiving money or any other thing of monetary value. Doc. 12-4 at 10. Meders received the death sentence for the offense of malice murder and a consecutive life sentence for the offense of armed robbery. *Id.* at 11-14. Meders' motion for new trial was denied on June 8, 1989. *Meders I*, 260 Ga. 49, 50 n.1.

a. Evidence Presented by the State in the Guilt Phase

Regarding the facts of the crime, the State presented testimony from two eye-witnesses of the crimes, a witness to whom Meders confessed, and physical evidence found in Meders' possession that definitively linked him to the crime. On the afternoon of October 13, 1987, Meders went to Randy Harris' home. Doc. 12-33 at 15-17; Doc. 12-34 at 4, 25.² They were later joined by Harris' cousin Bill Arnold, and Arnold's friend, Greg Creel. *Id.* All four men began drinking beer and vodka. Doc. 12-33 at 17; Doc. 12-34 at 4, 25. Harris testified that while at his house, Meders mentioned several times that he owed a man in Florida \$2,000.00, and unless Meders paid the man, people from Florida were going to kill Meders. *Meders v. Warden, Ga. Diagnostic Prison*, 911 F.3d 1335, 1338 (11th Cir. 2019).

Later that same evening, the four men left Harris' house and drove to the Best Western Motel; Harris had rented a room at the motel for a young woman, and the men joined her. Doc. 12-33 at 18-19; Doc. 12-34 at 5-6. The men continued to drink and began smoking marijuana. *Meders*, 911 F.3d at

² "Doc." refers to the Electronic Court Filing (ECF) number associated with the document filed in Meders' federal habeas proceeding, followed by the appropriate ECF page number.

1338. Arnold and Creel testified at trial that after several hours, Meders, Arnold, and Creel left the motel. Doc. 12-34 at 7-9; 12-35 at 4. Arnold drove the three men up and down Altama Drive, stopping at various bars. *Id.* Arnold and Creel both testified that they did not take Meders home and later pick him up on the night in question. Doc. 12-34 at 26-27; Doc. 12-35 at 5.

At approximately 2:30 a.m., Arnold and Creel testified that they stopped at the Marshes of McKay Jiffy Store in Glynn County. Doc. 12-34 at 11-12; Doc. 12-35 at 33. Arnold stayed in the car; Meders and Creel entered the store ostensibly for something to eat. *Meders*, 911 F.3d at 1339-40. Creel testified that he went to the back of the store to heat a package of sausage biscuits in the microwave oven³ and Meders went to the check-out counter located at the front of the store. *Id.* at 1339.

Don Anderson, the victim, was working the early morning shift of October 13 and 14, 1987. Doc. 12-35 at 33, 39. Meders pulled out a .38 caliber Dan Wesson revolver and shot Anderson in the chest.⁴ Doc. 12-36 at 2-3; Doc. 12-37 at 23-24, 27. The victim was shot twice—once in the chest and once in the head. Doc. 12-37 at 25-26. The victim’s death was the result of both gunshot wounds. *Id.* at 26-27; *Meders*, 911 F.3d at 1340 n.2.

Cash and food stamps were found lying on the ground near the register. Doc. 12-38 at 22-23. The serial numbers of two one-dollar bills and one five-dollar bill located in the cash drawer had been recorded by the store manager

³ Law enforcement “found a ‘Dandy Sausage Biscuits’ wrapper” in the car after it was impounded. *Meders*, 911 F.3d at 1340 n.2.

⁴ “[A] receipt was left sticking out of the register, which showed a transaction for 51 cents at 2:35 a.m. on October 14, 1987.” *Meders, supra*, at 1340.

as “bait money.” *Meders, supra*, at 1340. When the “bait money” was removed from the cash drawer, the store’s silent alarm was triggered. *Id.*

At the sound of the first gunshot, “Creel testified that he ‘tore out’ of the store, and as he was running out, he heard a second gunshot.” *Id.* at 1339. He “told Arnold to ‘go’ because Meders had ‘just shot a man.’” *Id.* Arnold and Creel testified that they had not seen Meders with a gun prior to this time, nor had they been aware of Meders’ plan. *Id.* at 1339-40; Doc. 12-34 at 10, 17-18, 27-30; Doc. 12-35 at 5-6, 9, 12.

Meders then exited the Jiffy store with the gun in his hand and got in the passenger seat of the car; the men left the store. Doc. 12-34 at 17-18, 29; Doc. 12-35 at 9. Creel testified that Meders pointed the gun at him and screamed at Creel to “shut up” or Meders would kill him. Doc. 12-34 at 19-20, 29-30; Doc. 12-35 at 9-10.

Arnold drove to a friend’s trailer at Shady Acres Trailer Park where Arnold and Creel exited the vehicle. *Meders, supra*, at 1339. “Meders asked Arnold and Creel if they wanted any of the money or food stamps he had taken from the store. They both said no, that they didn’t want any part of it.” *Id.* And “Arnold told Meders ‘to never come around him again.’” *Id.* Additionally, there was “no evidence that Arnold or Creel knew how much money was taken from the Jiffy Store.” *Id.* at 1352.

Meders returned to Harris’ room at the Best Western Motel “around 3:15 a.m.” *Id.* at 1338. Harris testified that “Meders pulled out a revolver and told him: ‘I just blowed a man’s head off over \$38.00.’” *Id.* at 1339. To prove what he said, Harris testified that “Meders threw some cash and some ‘little white pieces of paper’ about ‘the same size [as] a dollar bill’ on the bed. Meders also opened the revolver’s chambers and dumped the bullets on the

bed” which “Harris said that two of the bullets had been ‘freshly fired.’”

Id. Corroborating Harris’ testimony, the manager of the convenience store, Margaret Clements, testified that the cash audit of the register showed approximately \$31 to \$38 dollars had been taken. *Id.* at 1340.

Meders left the Best Western and arrived home around 3:30 a.m., which was shown through the testimony of Frank Eaves, a police officer with the Brunswick City Police Department. *Meders, supra*, at 1344; Doc. 12-47 at 22-27. Eaves witnessed the car Meders was driving on the night of the crimes speed past him around 3:30 a.m. *Meders, supra*. Soon thereafter, Eaves found the car parked at Meders’ residence.⁵ *Id.* Meders had already exited the vehicle but explained to Eaves that he was in a hurry to get home because he did not want his wife to find out he had been out with his girlfriend. *Id.* at 1344-45.

Based on information received from a confidential informant and a subsequent interview with Meders, Meders was arrested for the murder of Anderson and the armed robbery of the Marshes of McKay Jiffy Store. Doc. 12-39 at 13-17; Doc. 12-40 at 20. The serial numbers on a “torn” one-dollar bill recovered from Meders’ home, and serial numbers from a one-dollar bill and a five-dollar bill recovered from Meders’ wallet, matched the serial numbers of the bait money taken from the Jiffy Store. *Meders, supra*, at 1341. Also, at the time of Meders’ arrest, “officers took a ‘small .22 pistol,’

⁵ Additionally, another officer testified that when he was responding to the incident at the Jiffy Store, “he passed a car with several occupants driving away from the location” and this car was later found “at Meders’ house.” *Meders, supra*, at 1340 n.2.

which was loaded and had a shell in the chamber, from the right pocket of his jacket” and found “17 food stamps in the left pocket of Meders’ jacket.” *Id.*

The officers also found “a holster containing several rounds of .357 Magnum bullets” in Meders’ home. *Id.* at 1341. During the first search of Meders’ home, the police reports showed that law enforcement “had looked ‘around the bottom outside area’ of the waterbed but not underneath it.” *Id.* at 1347. Two days later, after receiving a tip from Harris, the Dan Wesson revolver that was used to murder the victim was found under the mattress of Meders’ waterbed.⁶ *Id.* at 1341.

Detective Jack Boyet testified that during Meders’ first statement to the police he denied involvement in the armed robbery and murder of Anderson. *Id.* at 1341. A year later, Meders provided a second statement in which he alleged Arnold was the murderer and also stated that Arnold and Creel had shot at two residences on the night of the crimes. *Id.* On cross-examination, Arnold and Creel denied involvement in these shootings. Doc. 12-34 at 27-28; Doc. 12-35 at 21-22.

During questioning by the State, Boyet denied that he had any evidence that Creel, Arnold or Harris possessed the murder weapon. Doc. 12-40 at 26. When cross-examined, the following colloquy occurred:

Q. [Davis] And you stated that [Arnold and Creel] denied shooting at a truck?

A. [Boyet] Yes, sir.

⁶ Harris testified at trial for the State in rebuttal that Sherry Meders, Meders’ wife, told him where the murder weapon was located. Doc 12-47 at 18.

Q. And did you have any reason to, to doubt that they were telling you the truth?

A. The only thing I had to indicate that they did do it was, is Jimmy Meders saying that they did.

Q. So you have no other reason?

A. There, there is no other evidence to indicate that they did. There, there are no witnesses that saw it other than the, the three who were allegedly in the [vehicle] and I have no proof that they did do it.

Doc. 12-40 at 34.

b. Evidence Presented by the Defense in the Guilt Phase

Meders testified that on the day of the crime he went to Harris' house where he consumed considerable quantities of beer, liquor, and Valium with Arnold, Creel, and Harris.⁷ *Meders, supra*, at 1343; Doc. 12-45 at 25. Meders testified that around 5:30 p.m. he asked Arnold and Creel to take him home. *Meders, supra*. “[L]ater that night, his friend Wayne Martin took him to the motel room that Harris had rented. Meders and Harris talked for a little while, then Martin took Meders back home, where Meders drank some beer and passed out on the couch.” *Id.* Meders testified that he was later woken by Arnold between 11:00 p.m. and 11:30 p.m. *Id.* Arnold asked him to go riding with him and Creel, and Arnold took Meders' .357 Magnum when they left. *Id.* According to Meders, “Arnold and Creel had gotten in a fight with some people (one of whom was a man named Keith Bowen) and ‘wanted

⁷ Meders was represented at trial by John Davis, an attorney with over forty-five years of experience. Doc. 12-204 at 23-24. At the time he represented Meders, he was “the Public Defender for the Brunswick Judicial Circuit.” *Id.*

revenge,” and “Arnold fired Meders’ gun twice — once at a dark truck parked at one house, and the other time at a white truck parked at the other house.” *Id.*

Meders subsequently testified that after shooting at the trucks he took over driving and was on his way home when he saw his brother and sister-in-law. *Id.* at 1344. Meders stopped, spoke with them, and Creel allegedly pulled out the handgun in front of Meders’ relatives. *Id.* According to Meders, Arnold got back in the driver’s seat at that time, ultimately drove them to the Jiffy Store, and all three men entered the store with Arnold carrying the handgun. *Id.* Then “out of nowhere, Arnold ‘pulled the gun and shot’ the clerk twice, then told Meders: ‘No witnesses. Get the money.’ Meders grabbed the money out of the cash register” and they left the store. *Id.* Directly thereafter, all three went to the Shady Acres trailer park where Arnold and Creel got out. *Id.* Meders testified that he did not “believe” anyone spoke on the way to the trailer park. Doc. 12-46 at 3. When Arnold and Creel got out, Meders told Arnold to keep the handgun and that was allegedly the last he saw of the murder weapon. *Id.* Meders testified that he then drove directly home. *Id.* at 4. Meders admitted that he did not give any of the money to Arnold or Creel. *Id.* at 32. Also, Meders admitted that he lied to law enforcement “multiple times” about the crimes. *Meders, supra*, at 1344.

Meders’ wife Sherry also testified during the guilt phase for the defense and provided corroborating testimony. She testified that Meders came home around 8:00 p.m. on the night of the crime and passed out on the couch around 10:00 p.m. *Id.* at 1343. Sherry testified that later that night Arnold came to her home, asked to borrow a gun, and she told Arnold to ask Meders,

who was still passed out on the couch. *Id.* She testified that Meders left with Arnold. *Id.* Sherry denied informing Harris that Meders had put the murder weapon in the waterbed and explained that there was a “busted” window that allowed anyone to “reach in and open the door.” Doc. 12-41 at 37-38.

On cross-examination, Sherry admitted she did not inform law enforcement during her pre-trial statement that Arnold came to her house looking for a gun on the night of the crimes. *Meders, supra*, at 1343. Nor did she inform them that Meders left with Arnold. *Id.* Instead, she told law enforcement that she did not know if Meders had left during the night. *Id.*

The defense also presented the testimony of Meders’ friend Wayne Martin. *Id.* Martin testified that around 7:00 p.m. or 7:30 p.m. on the night of the crimes, he picked-up Meders at his home and took him to the Best Western motel to see Harris. Doc. 12-42 at 2-4. After that, Martin brought Meders back home, Meders passed out on his couch, and Martin left Meders’ home around 10:00 p.m. *Meders, supra*, at 1343. Also, “Meders told him that he had been with Arnold and Creel at the time of the shooting, that they had his gun, but that he didn’t remember what happened during the shooting.” *Id.*

Also in support of Meders’ trial testimony, the defense presented testimony from Meders’ brother Stacey Meders and Stacey’s wife, Linda Meders. Both Stacey and Linda testified that they saw Meders “around 2:25 a.m. on October 14, that he was with Arnold and Creel then, and that the three men had a gun in the car.” *Id.* Finally, the defense presented Christopher Cravey who testified that he was at a bar the afternoon following the crimes and Arnold told him he had to meet with Harris and Creel to get their “story straight.” *Id.*; Doc. 12-44 at 19-20.

Defense counsel argued during closing that Arnold, Creel, and Harris had collaborated together and invented their testimony. Doc. 48 at 1-8. Counsel attacked inconsistencies in their testimony and argued that Harris planted the murder weapon in Meders' home. *Id.* In response, the State relied upon the physical evidence found in Meders' possession, pointed out that Meders only came up with his version of the crime a year after it occurred, and questioned the credibility of Meders' witnesses. Doc. 12-48 at 8-39. The State also argued that Meders failed to explain the gap in time between the crime at 2:35 a.m. and his arrival home at 3:30 a.m.—i.e. the time during which he was confessing to Harris, which Meders denied. *Meders, supra*, at 1345. And, as pointed out by Meders, the State argued that Arnold, Creel, and Harris gave the “same story all the way down the line from day one.” *Id.* at 12.

Finally, the jury sent out several notes during deliberations which included the following questions:

- 1) Were fingerprints found on any of the store or any items that were involved in the crime?
- 2) Were fingerprints looked for?
- 3) During the execution of the first search warrant, was the bedroom searched, if so was the waterbed searched?
- 4) Can fingerprints be taken and if so were they taken on the waterbed mattress?
- 5) Was (sic) there any reports filed on the incident of the truck on Ga. Hwy. 303, reported between the day after or between them and now, being shot at?
- 6) Was there any item lying on the counter that could have been 49 cents that someone could have put the correct numbers in the

machine that would make it look like someone had got something for 49 cents?

Doc. 12-50 at 19-20.

“The court told the jury that it could not ‘respond to you in any regard concerning the evidence in this case,’ and that the jury must base all of its findings on the evidence that had been presented to it.” *Meders, supra*, at 1345. The jury deliberated for “two hours,” “returned a guilty verdict on the charges of malice murder and armed robbery,” and “Meders was sentenced to death for the murder offense and to a consecutive life sentence for the armed robbery offense.” *Id.*

C. Direct Appeal

Meders appealed his convictions and sentences to the Georgia Supreme Court. Initially, Meders was represented by trial counsel on appeal; however, Meders’ current counsel subsequently entered as appellate counsel and filed another brief (Doc. 12-67) on Meders’ behalf prior to the Georgia Supreme Court’s decision. *Meders, supra*, at 1345. On February 28, 1990, the Georgia Supreme Court ruled on other enumerations of error but remanded Meders’ case to the trial court for a hearing on the issue of whether Meders received effective assistance of trial counsel. *Meders I*, 260 Ga. at 55-56.

D. Remand Proceeding

On March 26, 1991, a hearing was conducted in the trial court on the issue of whether trial counsel provided effective assistance of counsel. Docs. 12-78 thru 12-107. At the remand hearing, Meders was represented by Mary Erickson and current counsel Andru H. Volinsky and James K. Jenkins. Doc. 12-78 at 1. Trial counsel, Davis, initially informed appellate counsel that he would be available to testify at Meders’ remand hearing, but several days

before the hearing, Davis advised appellate counsel that he would no longer be able to attend the hearing due to hospitalization for “a partial amputation of this leg.” Doc. 59 at 4. Davis passed away prior to the state habeas hearing. *Meders, supra*, at 1347 n.4.

During the remand hearing, Meders alleged trial counsel was ineffective during the guilt phase for: 1) failing to use the pre-trial statements of Arnold, Creel, and Harris to impeach their trial testimony; 2) failing to use police reports located in the State’s file to impeach Arnold and Creel regarding the drive-by shootings on the night of the crimes; 3) “failing to object to the admission of an unadjudicated citation for cocaine sales” that was never mentioned at trial; and 4) “failing to object to the admission and use of food stamps based upon a note in the prosecutor’s open file that the food stamps could not be linked to the robbery.” *Meders, supra*, at 1345-46; Doc. 59 at 42-43.

Meders presented “the complete files of the prosecutor and of Meders’ trial counsel as well as documents from the Glynn County Police Department relating to Meders’ case.” *Meders, supra*, at 1346.⁸ The pre-trial statements of Arnold, Creel, and Harris were in the prosecutor’s file and showed discrepancies with their trial testimony. Specifically, appellate counsel pointed out that Arnold and Creel had both stated in their pre-trial statements, contrary to their trial testimony, that they had picked-up Meders from his home on the night of the crimes. *Id.* Additionally, contrary to Creel’s trial testimony, “Creel’s pretrial statement showed that he told the

⁸ There are no briefs in the record regarding Meders’ claims in the remand proceeding.

police he knew Meders had a gun when Meders went into the Jiffy Store.” *Id.* Also, Harris’ pre-trial statement showed that he told Detective Boyet that “he ‘had been thinking about it and the only place he could think of where Meders would have hidden the gun he used was the water bed in Meders['] bedroom.’ At trial, however, he had testified that Meders’ wife Sherry had told him where the gun was located.” *Id.* Regarding the drive-by shootings, “[t]he prosecutor’s file also contained two police reports that supported Meders’ trial testimony about the truck shootings and contradicted the testimony of Arnold, Creel, and Detective Boyet on that subject.” *Id.*

In addition, Meders presented twelve witnesses at the hearing. Meders first presented testimony from Margaret Bowen and her son William (“Billy”) Bowen. Both testified that they heard a shot fired at their home on the night of the crimes. Doc. 12-79 at 21-22, 25, 32. However, neither could identify the shooter. *Id.* Gregory McMichael, the responding officer with the Glynn County Police Department, testified that he was dispatched to the Bowen’s residence around 2:30 or 2:40 a.m. and took their statements. *Id.* at 8-15. McMichael did not collect any evidence and testified that he was never later provided with information from the Bowens that they could identify the shooter. *Id.* at 14-15.

Next, Meders presented Robert and Andrea Brown, who testified that the day after Anderson was murdered, their neighbor noticed a dent in their truck and a slug⁹ was found on the ground. Doc. 12-80 at 19-21. Neither witness could testify as to when the shooting occurred or who did the shooting, only that it occurred near the time of the murder. *Id.* Robert

⁹ A forensic examination was not performed on the slug. Doc. 12-82 at 35.

testified that he had an ongoing feud with Creel and a man named Larry Brockington. Doc. 12-79 at 35; Doc. 12-80 at 9-10.

On July 10, 1991, following the remand hearing, the trial court entered a nine-page order finding Meders had failed to establish ineffective assistance of counsel during the guilt phase of trial under the standards of *Strickland*. Pet. App. B. With regard to the failure to impeach Arnold and Creel's testimony, the court found this to be Meders' "most persuasive argument" but, without determining deficiency, the court found Meders had failed to show prejudice:

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

Pet. App. B at 9 (emphasis added). The remand court also found, without determining deficiency, that the failure to challenge the admission of the cocaine summons and the food stamps was also not prejudicial. *Id.* at 4, 6-7.

E. Direct Appeal of Remand Proceeding

On appeal following the remand, the Georgia Supreme Court affirmed Meders' convictions and sentences. *Meders v. State*, 261 Ga. 806 (1992) (*Meders II*). The court's decision on appeal was limited to the following affirmance of the trial court's decision: "The trial court's nine-page order persuasively demonstrates that Meders has failed to overcome the 'strong presumption' that Meders' trial counsel performed effectively." *Meders II*,

supra, 807. Thereafter, Meders filed a petition for a writ of certiorari in this Court, in part requesting that this Court grant review of his ineffective-assistance claim, which was denied on October 5, 1992. *Meders v. Georgia*, 506 U.S. 837, 113 S. Ct. 114 (1992).

F. First State Habeas Proceeding

Meders filed a state habeas corpus petition in the Superior Court of Butts County, Georgia on April 2, 1993. Doc. 12-122. In September of 2005, the state habeas court granted relief on Meders' claim of ineffective assistance of trial counsel claim. The Georgia Supreme Court reversed the grant of relief because the ineffective-assistance claim had already been decided on direct appeal and was procedurally barred. *Schofield v. Meders*, 280 Ga. 865, 632 S.E.2d 369 (2006) (*Meders III*). Thereafter, Meders filed a petition for writ of certiorari in this Court, which was denied on January 8, 2007. *Meders v. Schofield*, 549 U.S. 1126, 127 S. Ct. 958 (2007).

G. Initial Federal Habeas Proceeding

Meders filed his federal petition for writ of habeas corpus on July 23, 2007. Doc. 1. On September 19, 2007, the district court issued a stay in the federal habeas corpus proceeding and directed Meders to return to state court to exhaust his claims of ineffective assistance of appellate counsel. Doc. 9.

H. Second State Habeas Proceeding

Meders filed a successive state habeas corpus petition in the Superior Court of Butts County, Georgia in July of 2007, and an amended petition on in September of 2008, alleging the ineffective assistance of appellate counsel. Docs. 12-227, 37-4. The state habeas court denied relief, and the Georgia Supreme Court denied Meders' application for a certificate of probable cause

to appeal. Doc. 42-6; Doc. 42-14. Thereafter, Meders filed a petition for writ of certiorari in this Court, which was denied on October 17, 2011. *Meders v. Hall*, 565 U.S. 965, 132 S. Ct. 458 (2011).

I. Resumption of Federal Habeas Proceeding

Meders filed his amended federal petition for writ of habeas corpus in January of 2012. “The district court ruled that Meders’ trial counsel’s performance at the guilt phase was deficient but concluded that the trial court’s ruling on remand in the direct appeal that Meders could not establish prejudice was not an unreasonable application of *Strickland*.” *Meders*, 911 F.3d at 1348. The district court later granted a certificate of appealability “on a single general issue: whether Meders’ trial counsel was ineffective during the guilt phase of his trial.” *Id.*

The court of appeals reviewed the record and held that the state court’s decision did not violate § 2254(d)’s standards. *Id.* at 1348-55.

REASONS FOR DENYING THE PETITION

I. The court of appeal’s decision does not conflict with *Wilson*.

Meders seeks certiorari review of the denial of his ineffective-assistance claim on the basis that the court of appeals’ decision allegedly conflicts with *Wilson* and creates a circuit split because the court refused to “flyspeck” or “grade” the state court’s decision. Meders’ contention is without support.

The court of appeals’ decision faithfully applies *Wilson* and this Court’s precedents. The court specifically recognized *Wilson*’s instruction to “train its attention on the particular reasons” given by the state court in determining his ineffective-assistance claim. *Meders*, 911 F.3d at 1349 (quoting *Wilson*, 138 S. Ct. at 1191-92). But the court refused to “engag[e] in

a line-by-line critique of the state court’s reasoning” as advocated by Meders. *Id.* at 1350. The court of appeals explained that this type of analysis was “incompatible with both ‘the presumption that state courts know and follow the law’ and AEDPA’s ‘highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt.’” *Id.* (quoting *Woodford v. Visciotti*, 537 U.S. 19, 24, 123 S. Ct. 357, 360 (2002) (citation omitted) (internal quotation marks omitted)). Declining to “flyspeck” or “grade” the state court’s decision does not create a circuit split, is in direct accordance with this Court’s precedent, and respects the federalism and comity concerns underlying AEDPA.

Meders argues that the circuit split this Court took on in *Wilson* was the “methodology” to be used in analyzing a state court’s reasoned decision—i.e. the alleged method used by the court of appeals in Meders’ case. Pet at 3. This is misleading. As the court of appeals correctly explained, “*Wilson* was about which state court decision we are to look at if the lower state court gives reasons and the higher state court does not.” *Id.*; see also *Wilson*, 138 S. Ct. at 1192 (“We hold that the federal court should ‘look through’ the unexplained decision to the last related state-court decision that does provide a relevant rationale.”). But “[i]t was not about the specificity or thoroughness with which state courts must spell out their reasoning to be entitled to AEDPA deference or the level of scrutiny that we are to apply to the reasons that they give.” *Id.* Nothing in *Wilson* holds or suggests that federal courts are to engage in “flyspecking” and “grading” of a state court’s decision under the AEDPA. To the contrary, this Court has explained many times that federal courts are to give state court opinions substantial deference under § 2254(d). As pointed out by the court of appeals, this Court has “held that federal courts have no authority to impose mandatory opinion-writing

standards on state courts.” *Id.* at 1351 (quoting *Johnson v. Williams*, 568 U.S. 289, 300, 133 S. Ct. 1088, 1095 (2013)). What is more, state courts are not required to cite, or even be aware of, controlling federal law in order to receive AEDPA deference. *See, e.g. Early v. Packer*, 537 U.S. 3, 8, 123 S. Ct. 362, 365 (2002) (explaining that avoiding the “pitfalls” of § 2254(d) “does not require citation of our cases -- indeed, it does not even require *awareness* of our cases”) (emphasis in original). “And an ‘unreasonable application of those holdings must be ‘objectively unreasonable,’ not merely wrong; even ‘clear error’ will not suffice.” *White v. Woodall*, 572 U.S. 415, 419, 134 S. Ct. 1697 (2014) (quoting *Lockyer v. Andrade*, 538 U.S. 63, 75-76, 123 S. Ct. 1166 (2003) (citation marks omitted)).

As the court of appeals also pointed out, in *Harrington v. Richter*, 562 U.S. 86, 102, 131 S. Ct. 770 (2011), this Court held that AEDPA deference was due even to summary dispositions. Specifically: “Under § 2254(d), a habeas court must determine what arguments or theories supported or ...could have supported, the state court’s decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court.” *Richter*, 562 U.S. at 102. Contrary to Meders’ suggestion, this Court has not limited this holding to summary state court opinions. *See, e.g., Shoop v. Hill*, ___ U.S. ___, 139 S. Ct. 504, 506 (2019) (analyzing whether the state court’s *reasoned* opinion was “so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement”) (quoting *Richter*, 562 U.S. at 103); *Woods v. Etherton*, ___U.S. ___, 136 S. Ct. 1149, 1152-53 (2016) (per curiam) (providing additional reasons in support of the state court’s *reasoned* rejection of Etherton’s ineffective-assistance claim under *Richter*’s “fairminded jurist” standard). This makes sense, as “[i]t would be irrational to afford deference to a decision with no stated explanation but not afford deference to one that

states reasons, albeit not as thoroughly as it could have.” *Meders*, 911 F.3d at 1351.

Meders argues that the court of appeals “anti-flyspecking” and “anti-grading-papers” approach represents a split from all the other circuits. But for this to be true, the other circuits would have to be currently engaged in “flyspecking” and “grading” the state courts’ decisions. As shown *supra*, this type of review is not permitted under the AEDPA or this Court’s precedent. And Meders does not cite to any court of appeals’ decision in which a court suggests or holds that this is the type of review is mandated by the AEDPA. Instead, he argues that “[t]wo other courts of appeals [the Fifth and Seventh circuits] have issued decisions that may involve departures from *Wilson*,” in which the federal courts provided reasons allegedly not given by the state courts in denying relief.¹⁰ Pet. at 21 n.13. As even Meders acknowledges, this is not the same as refusing to “flyspeck” or “grade” a decision, and does not present an issue for certiorari review.

Meders also reads *Wilson* to stand for far more than the case’s limited holding. This Court has repeatedly cautioned the federal courts of appeals against fashioning a holding from a given case that reaches beyond the Court’s answer to the question presented in the case. *See, e.g., Lopez v. Smith*, ___, U.S. ___, 135 S. Ct. 1, 4 (2014) (per curiam) (rejecting the Ninth

¹⁰ Moreover, Meders incorrectly represents the decisions of the Fifth and Seventh circuits. Meders cites to language in the dissent of both *Langley v. Prince*, 926 F.3d 145, 174 (5th Cir. 2019) (en banc) and *Schmidt v. Foster*, 911 F.3d 469, 489 (7th Cir. 2018) (en banc) but the dissents misconstrue the majority opinions. In both *Langley* and *Schmidt*, the courts specifically examined the reasons given by the state courts and held the reasons withstood § 2254(d) scrutiny. Although the courts gave additional reasons in support of the state courts’ decisions, they did not “ignore” as argued by Meders, the reasons the state court provided. *Langley, supra*, at 156-63; *Schmidt, supra*, at 476-87.

Circuit's attempt to create a holding from the Court's precedent where "[n]one" of the Court's decision "address[ed]" the "specific question presented by this case"); *see also Meders*, 911 F.3d at 1351 ("Only the clearest indication that *Wilson* overruled the Supreme Court's previous decisions, such as *Johnson*, would warrant ignoring those decisions, and there is no indication at all that *Wilson* did so."). *Wilson* addressed only the narrow question whether a federal habeas court must "look through" a state court's summary affirmance to review a lower state court's reasoned opinion; it did not hold that the courts of appeals must also conduct a "line-by-line critique" of the state court's reasoned order. *Meders*, 911 F.3d at 1350. Just as important, as the court of appeals noted, *Meders*' method of review is contrary to this Court's repeated warning that a "[c]ourt's readiness to find error in [a state] court's opinion is 'inconsistent with the presumption that state courts know and follow the law.'" *Lafler v. Cooper*, 566 U.S. 156, 183, 132 S. Ct. 1376 (2012) (quoting *Woodford*, 537 U.S. at 24); *Meders*, *supra*, at 1350. *Meders*' reading of *Wilson* does not withstand scrutiny and his complaints with the court of appeals' decision do not warrant certiorari review.

II. The court of appeals properly applied this Court's precedent in conducting its § 2254 review.

The remainder of *Meders*' arguments are criticisms that the state court failed to credit the evidence in the manner he prefers in conducting its *Strickland* prejudice analysis. *Meders*' central complaint is that the state court should have credited his version of the crime, and any evidence in support, over that of the State's evidence of his guilt. This reduces *Meders*' arguments to a request for this Court to grant review to perform factbound error correction. This Court does not ordinarily grant certiorari review for this purpose, and there is no reason to do so here.

Meders begins by contending that the court of appeals “devoted its § 2254(d) analysis to developing then deferring to theories a hypothetical state court might have articulated.” Pet. at 22. This is not an accurate description of the court of appeals’ decision. The court of appeals took note of this Court’s directive to “train its attention” on the reasons given by the state court. *Meders*, 911 F.3d at 1349. The court then refused to “flyspeak” the order but explained that it would “focus not merely on the bottom line ruling of the decision but *on the reasons*, if any, given for it.” *Id.* (emphasis added). Based upon this correct standard of review, the court stated that the “bottom line” was that “counsel’s failure to use certain pretrial statements of witnesses and police reports coupled with their failure to object to certain evidence did not amount to ineffective assistance of counsel.” *Id.* And the “reasons” given by the state court were that Meders had not shown prejudice because “the evidence counsel failed to present was cumulative and outweighed by the strong evidence of guilt, and the objections that they failed to make would have been futile or otherwise would have made no difference anyway.” *Id.*

The court of appeals then went on to assess those reasons under the deferential AEDPA standard. The court recognized, as did the state court, that the State’s key witnesses—Arnold, Creel, Harris, and Boyet—could each have been impeached at trial if counsel had performed effectively. *Id.* at 1335, 1346-47; Pet. App. B at 7-9. However, the state court held there was no prejudice because the evidence of Meders’ guilt was still “overwhelming,” and the court of appeals held this was reasonable.¹¹ Pet. App. B at 9; *Meders*, *supra* at 1353-54.

¹¹ Meders argues that the “state court treated this credibility contest as an easy victory for the prosecution.” Pet. at 24. Nothing in the state court’s

In determining the state court’s prejudice decision was due deference under § 2254(d), the court of appeals examined the whole record—not just the portions relied on by Meders. During this review, the court of appeals determined there was “still undisputed evidence in the record pointing to Meders’ guilt.” *Meders, supra*, 1353. This evidence included that: 1) the bullets that killed the victim were from a .357 Magnum that Meders admitted he owned and was found under his waterbed (*id.*); 2) Meders was found in possession of the bait money taken from the cash register at the Jiffy Store and Meders admitted he took the money; and 3) Meders testified at trial that he “insisted that Arnold keep the firearm that belonged to” him but “never explained why he didn’t insist that Arnold take the cash” from the robbery “seem[ed] highly unlikely” (*id.*).

In addition to this “undisputed” evidence, Meders damaged his own credibility: He admitted during his own testimony before the jury that he had lied “several different times” to law enforcement. *Id.* Meders testified that on the night of the crimes he lied to the police officer “who pulled up at his house after the shooting that he had just gone to call his girlfriend and he was nervous because his wife would kill him if she found out.” *Id.* Also, Meders lied twice to law enforcement that he did not know anything about the crimes; however, a year after the crimes he confessed to law enforcement that he was present during the crimes but it was Arnold who pulled the

order suggests, as Meders’ implies, that the state court did not consider or gave short shrift to his evidence. Indeed, the state court admitted that attacking the State’s evidence in the manner advocated could have been effective, but “*after carefully considering the defendant’s contentions and the record*” the court could not find Meders had carried his burden under *Strickland*. Pet. App. B at 9 (emphasis added).

trigger.¹² *Id.* at 1353-54. Additionally, when law enforcement asked him “what firearms he owned, he listed several guns, failing to mention only one - his Dan Wesson .357 Magnum that was the murder weapon.” *Id.* at 1354.

In sum, Meders’ disagreements with the state court decision, and by extension the court of appeals, represent a plea for factbound error correction regarding how the state court determined the credibility of the evidence of his guilt. Meders argues that evidence of impeachment of Arnold, Creel, Harris, and Detective Boyet should have “tipped” the evidence in his favor despite the remaining evidence of his guilt. *Pet.* at 25. But that was not the question before the court of appeals. Instead, it was whether Meders “show[ed] that had his trial counsel used all of the impeachment material during the guilt phase of his trial, every fairminded jurist would conclude that there is a ‘substantial, not just conceivable,’ likelihood that the result of his trial would have been different.” *Meders, supra*, at 1354 (citing *Richter*, 562 U.S. at 112, 131 S. Ct. at 792). The court of appeals reasonably concluded that it was “not convinced that every reasonable jurist’s confidence in the outcome of the trial would have been undermined” thus, “[t]he state trial court’s prejudice determination was not unreasonable.” *Id.* See, e.g., *Rice v. Collins*, 546 U.S. 333, 341-42, 126 S. Ct. 969, 976 (2006) (“Reasonable minds reviewing the

¹² Meders also denied to Detective Boyet that he told Harris that he “had blew a man’s head off for \$38.00.” *Id.* at 1341. However, as correctly noted by the court of appeals, Meders admitted that he took money from the cash register, it was shown that between \$31 and \$38 was taken, and there was “no evidence that Arnold or Creel knew how much money was taken from the Jiffy Store” and *Id.* at 1352. So “either Meders told Harris that he took \$38 from the store (and lied to Boyet when denying that) or Harris miraculously guessed the precise amount of cash that Meders stole from the store.” *Id.*

record might disagree about the prosecutor's credibility, but on habeas review that does not suffice to supersede the trial court's credibility determination.").

Meders has failed to show the court of appeals did not properly apply § 2254(d) to the state appellate court's decision. Instead, Meders requests that this Court grant certiorari review to evaluate the factual determinations of the state appellate court, to which the court of appeals gave proper deference. Such factbound questions do not warrant further review.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, , I served this brief on all parties required to be served by mailing a copy of the brief to be delivered via email and post-prepaid and properly addressed upon:

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