**No. _____**

# In The
# Supreme Court of the United States

MICHAEL CLAYTON WOODRUFF,

*Petitioner,*

v.

RICKY D. DIXON, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

*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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November 26, 2025

## QUESTIONS PRESENTED

1. Where the court that presided over a defendant's trial and post-conviction evidentiary hearing finds the defendant suffered prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), is that mixed question of law and fact reviewed for clear error or reviewed de novo?

2. Where a defendant was convicted of one count but acquitted of others, may an appellate court rely on the acquittals in the jury's verdict as proof that he was not prejudiced under *Strickland*?

3. If the erroneous introduction of collateral crime evidence is presumptively prejudicial on direct appeal, may a post-conviction court rely on that presumption in concluding that the defendant was prejudiced by his attorney's deficient performance in failing to object to the presentation of such evidence?

## PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Michael Clayton Woodruff was the Petitioner-Appellant in the court below.

Respondent was the Respondent-Appellee in the Eleventh Circuit Court of 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. Woodruff*, Case No. 2013-cf-391-A-K (Fla. 16th Jud. Cir. 2015). Judgment issued on July 22, 2015.

- *Woodruff v. State of Florida*, 208 So.3d 1265 (Fla. 3d DCA 2017). Mandate following opinion affirming conviction entered on February 22, 2017.

- *Woodruff v. State of Florida*, Case No. SC17-426 (Fla. 2017). Order denying petition for review issued on May 24, 2017.

- *State of Florida v. Woodruff*, Case No. 2013-cf-391-A-K (Fla. 16th Jud. Cir. 2018). Order granting motion for post-conviction relief filed on September 27, 2018.

- *State of Florida v. Woodruff*, 346 So. 3d 1238 (Fla. 3d DCA 2022). Mandate following opinion reversing order granting post-conviction relief conviction entered on August 26, 2022.

- *Woodruff v. State of Florida*, Case No. SC22-1048 (Fla. 2023). Order denying petition for review issued on February 2, 2023.

- *Woodruff v. Florida Department of Corrections*, Case No. 4:23-cv-10037-DPG (S.D. Fla. 2025). Final Judgment in favor of Florida Department of Corrections entered on January 21, 2025.

- *Woodruff v. Florida Department of Corrections*, Case No. 25-10555 (11th Cir. 2025). Order denying motion for certificate of appealability issued on July 31, 2025.

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## PETITION FOR WRIT OF CERTIORARI

The State of Florida alleged Petitioner Michael Clayton Woodruff sexually abused his stepdaughter. The jury acquitted him of three of the counts and convicted him on a fourth count. However, the same judge who presided over his jury trial found Woodruff received ineffective assistance of counsel when his attorney permitted the State to introduce inadmissible testimony regarding several uncharged crimes.

In concluding that Woodruff suffered *Strickland* prejudice, the trial court found (1) the "testimony regarding the uncharged acts of sexual misconduct was extremely prejudicial"; (2) "[c]redibility was the prime issue because there was no confession and no physical evidence to corroborate D.B.'s version of events"; (3) "there is a reasonable probability that the jury found him guilty of Count 4 based on an aggregate of the allegations against him rather than because the State proved Count 4 beyond a reasonable doubt"; and (4) "[t]he sheer number of allegations against the Defendant may have convinced the jury that the Defendant was a bad person, and that some form of sexual misconduct must have occurred."

The trial court also relied on Florida precedent holding that the improper admission of evidence of an uncharged crime is "presumed harmful error," and "the admission of prior acts of child molestation has an even greater potential for unfair prejudice than the

admission of other collateral crimes." *McLean v. State*, 934 So. 2d 1248, 1256 (Fla. 2006).

The state appellate court reversed the decision of the trial court. Instead of deferring to the findings of the trial judge or reviewing them for clear error, the Third District Court of Appeal applied a de novo standard of review and ruled that there was no reasonable probability that counsel's failure to object to the admission of the evidence affected the outcome of the trial. In doing so, the Third District relied on the split jury verdict as proof that Woodruff was not prejudiced.

Woodruff filed a federal habeas petition under 28 U.S.C. § 2254 and argued that the state appellate court violated *Strickland* by conducting de novo review, instead of deferring to the findings of the trial court. He also argued that the appellate court contravened precedent from this Court when it interpreted the jury's verdict to mean that Woodruff was not prejudiced. *See United States v. Powell*, 469 U.S. 57 (1984) and *Dunn v. United States*, 284 U.S. 390 (1932). Finally, he argued that the appellate court unreasonably applied the facts to the law when it found there was no reasonable probability that the presumptively harmful admission of collateral crime evidence affected the outcome at trial. The district court rejected those arguments, and the Eleventh Circuit denied Woodruff a certificate of appealability.

This Court should grant this petition and resolve an important question regarding the proper standard of review for claims of ineffective assistance

of counsel. In *Strickland*, the Court opined that prejudice is a "mixed question of law and fact," *Strickland*, 466 U.S. at 698, but not all mixed questions of law and fact are subject to the same standard. *See generally US Bank NA v. Village at Lakeridge, LLC*, 583 U.S. 387, 396 (2018). Some mixed questions are reviewed de novo, while others are subject to clear error review. *Id.* Because the judge who presides over a trial and a post-conviction evidentiary hearing is better positioned to gauge the effect of the attorney's error on the proceedings, this Court should hold that findings of *Strickland* prejudice are owed deference and reviewed for clear error.

The Court should also reaffirm that it is impermissible to use a jury verdict as evidence regarding the intent or the deliberative process of the jury. "Each count in an indictment is regarded as if it was a separate indictment," *Dunn*, 284 U.S. at 393, and "[c]ourts have always resisted inquiring into a jury's thought processes," *Powell*, 469 U.S. at 67. As such, the Court should hold that the jury's split verdict has no probative value in determining whether a defendant was prejudiced by an attorney's deficient performance. Finally, the Court should rule that a presumptively harmful error at trial equates to *Strickland* prejudice. The harm caused by the improper introduction of uncharged crimes does not change based on whether the issue is raised on direct appeal or in a motion for post-conviction relief. If an error is presumptively harmful, there is a reasonable probability it changed the outcome, which is all that is needed to establish *Strickland* prejudice.

Even if the Court declines to review these questions on the merits, it should in any event grant the petition, vacate the order of the Eleventh Circuit, and remand the case for the issuance of a certificate of appealability, as reasonable jurists could certainly disagree on the questions presented here and below.

## DECISIONS BELOW

The Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County, Florida, entered an Order Granting Mr. Woodruff's Motion for Post-Conviction Relief. *See* App. 5a. Florida's Third District Court of Appeal reversed that decision. *State v. Woodruff*, 373 So. 3d 1152 (4th DCA 2023). The Florida Supreme Court declined Mr. Woodruff's petition for it to exercise discretionary review. *See* App. 5a

Mr. Woodruff petitioned the United States District Court for the Southern District of Florida for a writ of habeas corpus under 28 U.S.C. § 2254. App. 2a. The district court denied the petition and declined to issue a certificate of appealability. App. 42a. The Eleventh Circuit summarily denied Mr. Woodruff's motion for certificate of appealability, simply stating that he "failed to make a substantial showing of the denial of a constitutional right." App 1a.

## STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over Mr. Woodruff's petition for writ of

habeas corpus pursuant to 28 U.S.C. § 2254. This Court has jurisdiction to review the Eleventh Circuit's order denying a certificate of appealability, which was issued on July 31, 2025. 28 U.S.C. § 1254(1); *Buck v. Davis*, 580 U.S. 100 (2017) (reversing denial of certificate of appealability).

## 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.

Under 28 U.S.C. § 2253(c)(2), "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right."

## STATEMENT OF THE CASE

In 2012, Michael Woodruff's stepdaughter reported he sexually molested her three years earlier, while she and her brother were visiting Woodruff and his wife in Key West, Florida. On December 23, 2014, the State charged Woodruff by Amended Information with one count of sexual battery on a person under 12 years of age (Count 1), and three counts of lewd or lascivious molestation (Counts 2–4). App. 3a.

At trial, she testified about three separate incidents which formed the basis of the four counts in the Amended Information. App. 3a. First, she

testified that one night, Petitioner carried her to his room, had her undress, and got undressed himself. App. 3a. According to her testimony, Petitioner retrieved a handheld mirror and used it to show her the anatomy of her genitalia. App. 3a. The stepdaughter claimed Petitioner touched her vagina and instructed her to touch his penis. App. 3a.

Second, she testified that immediately after that incident, she went into the shower with Petitioner, and he washed her breasts, butt, and vagina. App. 3a. Third, she testified that she and her younger brother—Petitioner's biological son—went skinny dipping with Petitioner in his swimming pool on multiple occasions. On one occasion, she testified, Petitioner hugged her underwater "and his penis touched [her] vagina and it went in." App. 3a.

The victim also testified about three other incidents not charged in the Amended Information, in which Petitioner allegedly molested her in the shower. App. 4a. Each of these incidents allegedly occurred in the summer of 2009, when she was ten years old. App. 4a. Defense counsel never raised an objection to the introduction of this evidence of collateral crimes. *See* App. 5a.

The State relied exclusively on the victim's testimony. There was no corroborating eyewitness, medical evidence, physical evidence, or confession. At the conclusion of his trial, the jury found Woodruff guilty of one count of lewd and lascivious battery and not guilty on the remaining counts. App. 4a.

Shortly after trial, a seated juror, Juror Arnold, reached out to the trial court to express concerns with the verdict. App. 4a. The court held a hearing, and Juror Arnold testified that after the verdict was read, he realized he had doubts as to whether Petitioner's conduct was "lewd." App. 4a. He also testified he spoke with another juror after the trial who had similar doubts as to whether Woodruff's conduct was done in a lewd manner. App. 4a. Woodruff filed a timely motion for new trial based on that testimony, but the trial judge denied it, finding the juror's concerns to be a "classic case of buyer's remorse." App. 4a.

The court sentenced Woodruff to a mandatory term of twenty-five years in state prison, to be followed by lifetime probation. App. 4a. Petitioner appealed, and the Third District Court of Appeal affirmed his conviction and sentence on January 25, 2017. *Woodruff v. State*, 208 So. 3d 1265 (Fla. 3d DCA 2017).

On February 2, 2018, Petitioner filed a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. App. 5a. The trial court held a hearing on Petitioner's first claim, in which he alleged his trial attorney was ineffective for failing to object to the introduction of testimony regarding uncharged crimes. App. 5a.

Following the hearing, the same judge who presided over the trial proceedings, the Honorable Mark H. Jones, granted relief on the claim and ordered a new trial. *Woodruff v. Florida Department of Corrections*, Case No. 4:23-cv-10037-DPG, Doc. 10-

4 at 3-8 (S.D. Fla. 2025). He noted that the alleged victim testified to three different uncharged acts, all of which were disclosed in a Supplemental Discovery Response prior to trial to Woodruff's attorney. *Id.* at 4. The court observed that defense counsel conceded at the hearing that it was not a strategic decision to allow, without objection, the introduction of the uncharged acts of sexual molestation into evidence. *Id.* at 4.

The court found that the defense attorney was deficient for failing to object to the presentation of these uncharged criminal acts to the jury. *Id.* at 6. It also expressly found that the "uncharged acts of sexual misconduct was extremely prejudicial." *Id.* at 8. In reaching this decision, the judge relied on the specific contours of the trial, where "[c]redibility was the prime issue because there was no confession and no physical evidence to corroborate [the alleged victim's] version of events." *Id.*

Judge Jones also cited Florida precedent holding that, because of the "commonly held belief that individuals who commit sexual assault are more likely to recidivate as well as societal outrage directed at child molesters, the admission of prior acts of child molestation has an even greater potential for unfair prejudice than the admission of other collateral crimes." *Id.* at 8 (quoting *McLean*, 934 So. 2d at 1256).

As such, the same judge who presided over Woodruff's trial found that there was a "reasonable probability that the jury found him guilty of Count 4 based on an aggregate of the allegations against him

rather than because the State proved Count 4 beyond a reasonable doubt." *Id.* at 8. Judge Jones explained that the "sheer number of allegations against the Defendant may have convinced the jury that the Defendant was a bad person, and that some form of sexual misconduct must have occurred." *Id.* And since the "trial counsel's deficiency undermines the confidence in the outcome of trial," Judge Jones vacated Woodruff's conviction and afforded him a new trial on Count 4. *Id.*

On July 20, 2022, the Third District Court of Appeal reversed that decision. *State v. Woodruff*, 346 So. 3d 1238 (3d DCA 2022). The appellate court agreed that defense counsel performed deficiently but reversed the order granting Woodruff a new trial because it found he did not suffer prejudice. *Id.* at 1242.

The appellate court recognized that, under Florida law, the erroneous admission of collateral crime evidence is "presumed harmful error because of the danger that a jury will take the bad character or propensity to crime thus demonstrated as evidence of guilt of the crime charged." *Id.* at 1243 (quoting *Straight v. State*, 397 So. 2d 903, 908 (Fla. 1981)). Yet it still found the "record reveals no reasonable probability that the collateral crimes evidence improperly influenced the jury in convicting Woodruff on one count."

Instead of deferring to the findings of the lower court or reviewing them for clear error, the appellate court opined that "the issue of prejudice for ineffective

counsel purposes under *Strickland* is . . . a question of law reviewed de novo, separate and apart from any determination of error." *Id.* at 1243 (citing *Bruno v. State*, 807 So. 2d 55, 62 (Fla. 2001)). In conducting its de novo review, the appellate court did not address the specific factual findings regarding prejudice made by the judge who presided over the trial. Instead, it found the jury's split verdict proved that the panel was not swayed by the erroneously introduced evidence of collateral crimes:

> Of the four charges, the jury found Woodruff guilty only of Count 4, based on the touching of the victim's vagina in the bedroom, before the first shower. He had also been charged with having the victim touch his penis during that same event (Count 2), but the jury distinguished between the two charges and acquitted him of only one despite both being based on effectively the same evidence. Importantly, the jury acquitted Woodruff of Count 3 (the first shower incident) even though the improper collateral crime evidence (the uncharged second shower incident) served only to bolster the victim's credibility (or discredit Woodruff's denial) as to the charged first shower incident. We take the fact that the jury was able to weigh the victim's credibility against Woodruff's and make an independent determination about his guilt as to each individual charge (as opposed to simply deciding that Woodruff

> must have been guilty of something by virtue of the volume of allegations), coupled with the fact that all of the collateral crimes evidence at issue related only to acts that Woodruff was ultimately acquitted of and which occurred after the only act that resulted in a conviction, to indicate that there is no reasonable probability that counsel's failure to object to the admission of the improper *Williams* rule[1] evidence affected the outcome of this proceeding.

*Woodruff*, 346 So. 3d at 1243. Petitioner sought discretionary review with the Florida Supreme Court, which declined to accept jurisdiction. App. 5a.

In his habeas petition, Woodruff argued that the denial of this claim was unreasonable because the appellate court (1) misstated the legal standard for prejudice and failed to defer to the trial court's factual findings, (2) improperly "interpreted" the jury's verdict to find no *Strickland* prejudice, and (3) mischaracterized the evidence. *Woodruff v. Florida Department of Corrections*, Case No. 4:23-cv-10037-DPG, Doc. 3 at 14-25 (S.D. Fla. 2025).

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[1] The "*Williams* rule" refers to *Williams v. State*, 110 So. 2d 654 (Fla. 1959), a holding codified in section, 90.404, Florida Statutes, which provides that evidence of similar acts by the defendant, also known as "collateral crime evidence," is admissible if relevant, except to prove bad character or propensity. *Id.*; *McLean v. State*, 934 So. 2d 1248, 1255 (Fla. 2006).

In connection with his first argument, Woodruff pointed to this Court's statement in *Strickland* that "both the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact." *Id.* at 19 (quoting *Strickland*, 466 U.S. at 698). He also observed that the trial court judge, who presided over both the trial and post-conviction hearing, was better positioned vis-à-vis the appellate court to gauge fact-bound questions related to the prejudicial effect of the testimony introduced at trial. However, because the state appellate court applied the wrong standard on appeal and failed to give any deference to the findings made by the trial court, he argued that it unreasonably applied *Strickland*. *Id.* at 19.

He also argued that the state appellate court violated precedent from this Court that prohibits lower tribunals from interpreting a jury's verdict to divine its intent. *Id.* at 19-21 (citing, *inter alia*, *United States v. Powell*, 469 U.S. 57, 62-66 (1984) and *Dunn v. United States*, 284 U.S. 390 (1932)). Since "[e]ach count in an indictment is regarded as if it was a separate indictment," *Dunn*, 284 U.S. at 393, and "[c]ourts have always resisted inquiring into a jury's thought processes," *Powell*, 469 U.S. at 67, he argued it was impermissible for the appellate court to interpret his acquittal on several counts as proof of the absence of the prejudice in his conviction of another count. *Id.*

Relatedly, Woodruff argued that the appellate court's decision was an unreasonable determination of the facts in light of the evidence presented at trial. *Id.*

at 23. He argued that the record was devoid of any discussion as to why the jury reached its decisions, which rendered the appellate court's interpretation of the verdict pure speculation. Additionally, he maintained that the record did not support the appellate court's finding that "the collateral crimes evidence at issue related only to acts that Woodruff was ultimately acquitted of." He pointed out that the collateral crime evidence at issue directly related to Woodruff's propensity to commit Count 1 and whether the jury would believe the charged touching in Count 1 was done in a lewd and lascivious manner. *Id.* at 24. As support, he referenced the testimony of Juror Arnold, who expressed grave doubts as to whether Woodruff's conduct was "lewd" and advised the court that another juror shared his concern. *Id.*

Woodruff additionally maintained that the record was equally susceptible to the conclusion reached by the trial court, that is, the jury's verdict was the product of the sheer volume of allegations raised against him, as opposed to the proof beyond a reasonable doubt that he committed the single offense of conviction. *Id.* In support, Woodruff pointed out that collateral crime evidence is "presumptively harmful," and the danger of unfair prejudice is even more pronounced in cases where the allegations concern sexual abuse of minors: "Because of the commonly held belief that individuals who commit sexual assaults are more likely to recidivate as well as societal outrage directed at child molesters, the admission of prior acts of child molestation has an even greater potential for unfair prejudice than the

admission of other collateral crimes." *Id.* at 25 (citing *McLean*, 934 So. 2d at 1256).

In conclusion, he argued that the appellate court's decision to deny relief was (1) contrary to, or involved an unreasonable application of, clearly established Federal law, including *Strickland*, *Powell* and *Dunn*, and (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Given those flaws in its decision, Woodruff asked the district court to defer to Judge Jones's finding that he received ineffective assistance of counsel and was entitled to a new trial. *Id*. at 24-25.

The federal district court denied Woodruff habeas relief. App. 9a-19a. It took as a given that trial counsel performed deficiently by failing to object to the introduction of the inadmissible collateral crime evidence. App. 10a, n.3. It also agreed with *Woodruff* that "the Third DCA stated . . . in its opinion that the *Strickland* prejudice inquiry is 'a question of law,'" which constituted a "misstatement of a legal principle." App. 12a.

Nevertheless, the district court disagreed with Woodruff's assertion that the appellate court erroneously applied the test for *Strickland* prejudice: "The Third DCA did not misapply *Strickland*. Both the deficient-performance and prejudice prongs of *Strickland* 'present mixed questions of law and fact reviewed *de novo* on appeal.'" App. 12a (quoting *Cade v. Haley*, 222 F.3d 1298, 1302 (11th Cir. 2000)).

According to the district court, the "Third DCA took issue with the trial court's *legal* conclusion that '[t]he erroneous admission of evidence of collateral crimes is presumptively harmful.'" App. 12a-13a (emphasis in original). In the view of the district court, the Third DCA "correctly pointed out" that "presumed harmful error" in the context of a direct appeal is a "different question" from *Strickland* prejudice. App. 13a. The federal court also opined that the cases underlying the trial court's finding of prejudice—*McCall v. State*, 941 So. 2d 1280, 1283 (Fla. 4th DCA 2006) and *McLean v. State*, 934 So. 2d 1248, 1262 (Fla. 2006)—were inapplicable because both "involved direct appeals in which a presumption of prejudice from erroneously admitted evidence applies." App. 13a.

Regarding the failure to afford the trial court's findings any deference, the federal habeas court stated as follows: "Petitioner is incorrect that the Third DCA failed 'to make mention or give deference to' the trial court's factual findings. Most of the findings he claims were entitled to deference were, in fact, mixed legal and factual findings of prejudice that were subject to a *de novo* standard of review." App. 13a.

The district court also rejected Woodruff's argument that the state appellate court improperly interpreted the verdict to establish the absence of *Strickland* prejudice. App. 15a. According to the district court, "*Powell* and *Dunn* have no bearing on this case because the verdict in this case was not inconsistent and was never challenged as such," and the "decisions themselves have no relevance to such

claims." App. 15a. It found, on the contrary, that interpreting verdicts is "precisely what *Strickland* requires courts to do: to ask what the verdict would have been absent defense counsel's errors." App. 15a.

Finally, the district court rejected Woodruff's argument that the decision of the state appellate court involved an unreasonable determination of the facts. App. 16a. It recognized that the "first shower incident technically included conduct that was not charged," but stated that, "Petitioner fails to explain how this fact has any bearing on whether he suffered prejudice from D.B.'s testimony about the second shower incident." App. 16a-17a. It held as follows: "The Third DCA reasonably concluded that it was unlikely the jury found Petitioner guilty of Count 4 based on additional evidence of sexual misconduct in the shower if it *acquitted* Petitioner of the charge related to sexual misconduct in the shower." App. 17a (emphasis in original).

In addition, it reasoned that the "Third DCA's finding of a lack of prejudice is supported by the simple rationale that the trial evidence, even without D.B.'s testimony about a second shower incident, was sufficient to support the jury's verdict as to Count 4." App. 18a. It concluded that "because there was sufficient evidence to support the jury's verdict without the inadmissible *Williams* rule evidence, Petitioner has not demonstrated that the Third DCA's decision was contrary to, or involved an unreasonable application of, federal law or was based on an unreasonable determination of the facts." App. 18a-

19a. The district court declined to issue a certificate of appealability. App. 41a.

Woodruff filed a motion for certificate of appealability in the Eleventh Circuit. He renewed the argument that the state appellate court unreasonably applied *Strickland* because it conducted de novo review of the prejudice component without giving any deference to the trial court's findings. He also asserted that reasonable jurists could disagree about the propriety of speculatively interpreting the jury's split verdict to conclude that a defendant suffered no *Strickland* prejudice. In addition, he faulted the district court because its rationale regarding the sufficiency of the evidence supporting the conviction "fails entirely to account for the presumed harm caused to a defendant at trial by the improper introduction of the collateral crime evidence."

The Eleventh Circuit summarily denied his motion, finding that Petitioner "failed to make a substantial showing of the denial of a constitutional right." App. 1a. This timely petition followed.

## REASONS FOR GRANTING THE WRIT

This Court should review the first question presented and clarify that a trial court's finding of *Strickland* prejudice is reviewed for clear error where it involves an evaluation of the weight of the evidence, the credibility of witnesses, and the degree to which the errors of counsel undermined confidence in the outcome.

This Court wrote in *Strickland* that prejudice is a "mixed question of law and fact." *Strickland*, 466 U.S. at 698. But mixed questions "are not all alike." *Village at Lakeridge*, 583 U.S. at 397. Some mixed questions are reviewed de novo, while others are subject to clear error review. *Id.*

In *Miller v. Fenton*, 474 U.S. 104, 114 (1985), this Court observed that, where an "issue falls somewhere between a pristine legal standard and a simple historical fact," the standard of review often reflects which "judicial actor is better positioned" to make the decision. De novo review is appropriate when the adjudication of the mixed question requires a court to "expound on the law, particularly by amplifying or elaborating on a broad legal standard." *Village at Lakeridge*, 583 U.S. at 397.

On the other hand, the clear error standard is more appropriate where the mixed question requires a court to "marshal and weigh evidence, make credibility judgments, and otherwise address . . . 'multifarious, fleeting, special, narrow facts that utterly resist generalization.'" *Id.* (quoting *Pierce v. Underwood,* 487 U.S. 552, 561-62 (1988). Review of this sort entails deference to the rulings of the trial court, which occupies a superior position in judging such matters. *Id.* (citing *Anderson v. Bessemer City*, 470 U.S. 564, 574-576 (1985)).

The district court in this case, citing authority from the Eleventh Circuit, ruled that the mixed question of law and fact that inheres in a finding of

*Strickland* prejudice is reviewed de novo. This cannot be correct.

The judge who presided over Woodruff's trial and held the hearing on his motion for post-conviction relief is better positioned to gauge whether he suffered *Strickland* prejudice than an appellate court reviewing a cold record. The prejudice inquiry requires a post-conviction court to weigh evidence and make credibility judgments in order to gauge the strength of the case against a defendant. *See Thornell v. Jones,* 144 S. Ct. 1302, 1310 (2024); *Wong v. Belmontes*, 558 U.S. 15, 26 (2009) (per curiam) (courts must "consider all the evidence—the good and the bad"). Against that backdrop, the court must determine whether the errors of counsel were so grave as to undermine confidence in the outcome. *Id.*

Here, the trial court found (1) the "testimony regarding the uncharged acts of sexual misconduct was extremely prejudicial"; (2) "[c]redibility was the prime issue because there was no confession and no physical evidence to corroborate D.B.'s version of events"; (3) "there is a reasonable probability that the jury found him guilty of Count 4 based on an aggregate of the allegations against him rather than because the State proved Count 4 beyond a reasonable doubt"; and (4) "[t]he sheer number of allegations against the Defendant may have convinced the jury that the Defendant was a bad person, and that some form of sexual misconduct must have occurred." Based on these findings, Judge Jones found that "trial counsel's deficiency undermines the confidence in the outcome" and granted Woodruff a new trial.

It would make little sense to entrust a panel of appellate judges with the task of conducting de novo review of such fact-intensive determinations, while giving no deference whatsoever to the findings of the judge who actually conducted the jury trial. Judge Jones had a superior perspective because he was able to observe the faces of the jurors and gauge the impact of the inadmissible collateral crime evidence in real time while it was being introduced. Judge Jones had also gained rare insight into the deliberative process of the jury when he held a hearing on concerns raised by one of sitting jurors regarding the sufficiency of the evidence. That juror advised the trial court that another juror shared his concerns that Woodruff's conduct was not "lewd."

The findings of Judge Jones on this mixed question of law and fact should have been reviewed for clear error. Yet the Third DCA mistook the proper standard and ruled that the "issue of prejudice for ineffective counsel purposes under *Strickland* is . . . a question of law reviewed de novo." *Woodruff*, 346 So. 3d 1238 at 1240. As such, it afforded his findings no deference at all, a decision ratified by the federal habeas court. This Court should reverse that ruling and hold that a finding of *Strickland* prejudice under these circumstances is a mixed question of law and fact that is reviewed for clear error.

The Court should also review the second question presented and hold that it is impermissible to consider a split verdict as evidence that a defendant suffered no prejudice from the errors of his defense

counsel. In *Powell*, this Court cautioned against making any "individualized assessment of the reason for the inconsistency" of a jury verdict, as doing so would be "based either on pure speculation, or would require inquiries into the jury's deliberations that courts generally will not undertake." *Powell*, 469 U.S. at 66. "Each count in an indictment is regarded as if it was a separate indictment," and an acquittal on one count is not probative of a defendant's guilt or innocence on another count. *Dunn*, 284 U.S. at 393. "That the verdict may have been the result of compromise, or of a mistake on the part of the jury, is possible. But verdicts cannot be upset by speculation or inquiry into such matters." *Id.*

It is true, as the district court held, that *Powell* and *Dunn* arose out of the context of inconsistent verdicts, but the reasoning of those decisions is equally applicable here. The appellate court's finding that he suffered no prejudice because the jury acquitted him of certain counts amounted to either "pure speculation" or an inquiry "into the jury's deliberations that courts generally will not undertake." *Powell*, 469 U.S. at 66. If the Third DCA were truly interested in the thought process of the jury, it would have credited the best evidence available on that score, the testimony of Juror Arnold, who testified that he and another juror had made a mistake when they found Woodruff guilty beyond a reasonable doubt because the State had not proven that his conduct was "lewd." The Third DCA made no mention of this aspect of the record in its decision and instead relied on a speculative inquiry into the deliberative process of the jury to overturn the well-

reasoned decision of Judge Jones. Given this manifest error in applying clearly established federal law, this Court should reverse the ruling of the federal habeas court and remand for the issuance of a writ of habeas corpus.

Finally, the Court should review the third question presented and hold that, where the erroneous introduction of evidence that is "presumptively harmful" for purposes of direct appeal, that presumption is sufficient to satisfy the test for *Strickland* prejudice. Florida appellate courts routinely recognize that the introduction of uncharged conduct is presumptively harmful, both on direct appeal and on collateral review. *See e.g. Rodriguez-Olivera v. State*, 328 So. 3d 1080 (Fla. 2d DCA 2021) (postconviction); *Botto v. State*, 307 So. 1006 (Fla. 5th DCA 2020) (postconviction); *Smith v. State*, 170 So. 3d 124 (Fla. 1st DCA 2015) (postconviction); *McCall v. State*, 941 So. 2d 1280, 1283 (Fla. 4th DCA 2006) (direct appeal). The Florida Supreme Court has also recognized that the erroneous presentation of collateral crime evidence is even more problematic where the allegations concern sexual abuse of a minor. *McLean*, 934 So. 2d at 1262. Judge Jones properly considered these decisions in finding *Strickland* prejudice.

To defend the decision of the Third DCA, however, the federal habeas court found that word prejudice means something different for direct appeals that when the word is used in post-conviction proceedings:

> In finding prejudice, the trial court relied on two cases—*McCall v. State*, 941 So. 2d 1280, 1283 (Fla. 4th DCA 2006) and *McLean v. State*, 934 So. 2d 1248, 1262 (Fla. 2006)—both of which involved direct appeals in which a presumption of prejudice from erroneously admitted evidence applies. The Third DCA rightly found that the trial court incorrectly applied this presumption in the *Strickland* prejudice context.

App. 13a.

This distinction is illogical. The harm caused by the improper introduction of testimony regarding uncharged crimes does not change based on whether the issue is raised on direct appeal or in a motion for post-conviction relief. And if a defendant would be entitled to a new trial on appeal if his attorney had just objected, it necessarily follows that the outcome would have been different if counsel had not dropped the ball and failed to object. Prejudice is prejudice.

Moreover, the district court grossly misapplied *Strickland* when concluded that Woodruff suffered no prejudice because the evidence was sufficient to sustain his conviction. *Crace v. Herzog*, 798 F.3d 840, 849–50 (9th Cir. 2015) ("By pronouncing as a matter of law that, as long as there is sufficient evidence to support the jury's verdict, no prejudice results from a defense attorney's failure to request a lesser-included-offense instruction, the Washington Supreme Court

has licensed Washington courts to avoid analyzing prejudice in the way that *Strickland* requires.").

The questions presented raise pressing issues about the proper application of the *Strickland* test. Accordingly, this Court should grant this petition and answer those questions. Even if the Court declines to take up these issues on the merits, it should still grant this petition, vacate the ruling of the Eleventh Circuit and remand for the issuance of a certificate of appealability.

A habeas petitioner need only demonstrate that "reasonable jurists could debate" whether the initial habeas petition should have been granted or if "the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). As the Court explained in *Miller-El v. Cockrell*, "a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. . . . Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Miller-El*, 537 U.S. at 336.

Here, a reasonable jurist—Judge Jones—has already disagreed with the ruling of the state appellate court. That means Woodruff made a sufficient showing to allow him to brief the matter on the merits. Accordingly, because the Eleventh Circuit erred to deny him a certificate of appealability, this

Court should reverse that decision and remand for merits briefing in the Eleventh Circuit.

## CONCLUSION

Based on the foregoing, this Court should grant this petition and review the decision below.

Respectfully submitted on this 26th day of November, 2025.

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# APPENDIX

## TABLE OF APPENDICES

**APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED JULY 31, 2025**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25 -10555

MICHAEL CLAYTON WOODRUFF,

*Petitioner-Appellant,*

versus

FLORIDA DEPARTMENT OF CORRECTIONS,

*Respondent-Appellee.*

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 4:23-cv-10037-DPG

Filed July 31, 2025

ORDER:

Michael Woodruff moves for a certificate of appealability, in order to appeal the denial of his 28 U.S.C. § 2254 petition. His motion is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

/s/ Robert J. Luck
UNITED STATES CIRCUIT JUDGE

## APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, ENTERED JANUARY 21, 2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 4:23-cv-10037-GAYLES

MICHAEL CLAYTON WOODRUFF,

*Petitioner,*

v.

FLORIDA DEPARTMENT OF CORRECTIONS,

*Respondent.*

Entered January 21, 2025

### ORDER DENYING 28 U.S.C. § 2254 PETITION FOR WRIT OF HABEAS CORPUS

**THIS CAUSE** comes before the Court on Petitioner Michael Clayton Woodruff's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (the "Petition") [ECF No. 1]. Petitioner, a state prisoner, challenges his conviction and sentence for lewd and lascivious molestation in Case No. 2013-CF-319-A-K in the Sixteenth Judicial Circuit, in and for Monroe County, Florida. The Court has reviewed the record, including the Petition; Petitioner's Memorandum of Law in Support of Petition, [ECF No. 3]; the State's Response to the Court's Order to Show

Cause, [ECF No. 10]; the state court record, [ECF Nos. 10-2-10–14]; and Petitioner's Reply, [ECF No. 11]. For the reasons stated herein, the Petition is **DENIED**.

## I. BACKGROUND

On December 23, 2014, the State charged Movant by Amended Information with one count of sexual battery on a person under 12 years of age (Count 1), and three counts of lewd or lascivious molestation (Counts 2–4). Resp't App. C [ECF No. 10-2 at 18–19]. At trial, the victim, D.B.—Petitioner's stepdaughter—testified about three separate incidents which formed the basis of the four counts in the Amended Information. First, D.B. testified that one night, Petitioner carried her to his room, had her undress, and got undressed himself. Trial Tr. [ECF No. 10-7 at 94–99].[1] D.B. testified that Petitioner then retrieved a handheld mirror and used it to show her "where the pee hole was and where the baby-comes-out-of hole." *Id.* at 96. D.B. said that Petitioner then touched her vagina and instructed her to touch his penis, which she did. *Id.* at 97–99. Second, D.B. testified that immediately after that incident, she went into the shower with Petitioner, and he washed her breasts, butt, and vagina. *Id.* at 99–100. Third, D.B. testified that she and her younger brother—Petitioner's biological son—went skinny dipping with Petitioner in his swimming pool on multiple occasions. *Id.* at 103–104. On one occasion, Petitioner hugged D.B. underwater "and his penis touched [her] vagina and it went in." *Id.* at 105.

1. The page number citations for the trial transcripts refer to the electronically generated pagination in CM/ECF, and not the page numbers on the original transcripts.

D.B. also testified about other incidents not charged in the Amended Information, in which Petitioner allegedly molested her in the shower. *Id.* at 94–108. These incidents all occurred in the summer of 2009, when D.B. was ten years old. *Id.* at 81.

On May 14, 2015, the jury found Petitioner guilty of Count 4 and not guilty of Counts 1–3. Resp't App. F [ECF No. 10-2 at 43–46]. After the trial, a seated juror, Juror Arnold, contacted the court expressing concerns with the verdict. Hr'g Tr. [ECF No. 10-12 at 6–7]. The court held a hearing at which Juror Arnold testified that after the verdict was read, he realized he had doubts as to whether Petitioner's conduct was "lewd." *Id.* at 7, 14–15. Juror Arnold stated that he spoke with another juror after the trial who also had doubts about whether the conduct was lewd. *Id.* at 10–12. Petitioner moved for a new trial based in part on Juror Arnold's testimony. Resp't App. P [ECF No. 10-2 at 81–82]; Hr'g Tr. [ECF No. 10-13]. The trial court denied the motion, reasoning that when Juror Arnold was polled immediately after the verdict was read, he stated that it was his verdict, and that his post-verdict testimony was "a classic case of buyer's remorse." [ECF No. 10-13 at 41].

On July 22, 2015, the trial court sentenced Petitioner to a mandatory twenty-five years in state prison, followed by lifetime probation. Resp't App. I, J [ECF No. 10-2 at 57–64]. Petitioner appealed, and the Third District Court of Appeal ("Third DCA") affirmed his conviction and sentence on January 25, 2017. *Woodruff v. State*, 208 So. 3d 1265 (Fla. 3d DCA 2017).

*Appendix B*

On February 2, 2018, Petitioner filed a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850, raising seven claims, including the same six claims he raises here. Resp't App. AK [ECF No. 10-3 at 57–84]. The trial court held a hearing on Petitioner's first claim, which alleged that his trial attorney was ineffective for failing to object to the introduction of uncharged crimes through D.B.'s testimony. Resp't App. AM, *id.* at 139. Following the hearing, the trial court granted relief on the claim and ordered a new trial. Resp't App. AN [ECF No. 10-4 at 3–8]. It denied relief as to all other claims. *Id.* at 4–12. On July 20, 2022, the Third DCA reversed the trial court's grant of post-conviction relief. *State v. Woodruff*, 346 So. 3d 1238 (3d DCA 2022). Petitioner then sought discretionary review with the Florida Supreme Court, which declined to accept jurisdiction. *Woodruff v. State*, No. SC22-1048, 2023 Fla. LEXIS 231, 2023 WL 1466563 (Fla. Feb. 2, 2023).

On May 26, 2023, Petitioner timely filed the instant § 2254 Petition, raising six claims of ineffective assistance of counsel:

1. Ineffective assistance of counsel by failing to object to the introduction of uncharged acts.

2. Ineffective assistance of counsel by failing to object or request a curative or special jury instruction for the often-used phrase of sexual gratification.

3. Ineffective assistance of counsel by failing to object to law enforcement vouching as to the

credibility of the victim and the veracity of her allegations.

4. Ineffective assistance of counsel by failing to introduce evidence of the victim's prior lie about being pregnant to gain attention after the State opened the door to its admission.

5. Ineffective assistance of counsel by failing to object and motion for a new trial after the prosecutor made numerous improper remarks during opening and closing statements.

6. Ineffective assistance of counsel based on the cumulative effect of defense counsel's errors.

[ECF No. 3]. The State filed a Response, arguing that all six claims should be denied on the merits. [ECF No. 10]. Petitioner filed a Reply. [ECF No. 11]. The matter is ripe for review.

## II. LEGAL STANDARD

### A. Standard of Review Under 28 U.S.C. § 2254

To obtain federal habeas relief, a state prisoner must show that he "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The Court may grant habeas relief only if the state court's decision on the merits of the federal claim was: (1) "contrary to, or involved 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. § 2254(d)(1)–(2). This standard is highly deferential to state court decisions. *Wilson v. Sellers*, 584 U.S. 122, 125, 138 S. Ct. 1188, 200 L. Ed. 2d 530 (2018); *Cullen v. Pinholster*, 563 U.S. 170, 181, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011).

"A decision is 'contrary to' clearly established federal law if the state court applied a rule that contradicts governing Supreme Court precedent, or if it reached a different conclusion than the Supreme Court did in a case involving materially indistinguishable facts." *James v. Warden*, 957 F.3d 1184, 1190 (11th Cir. 2020) (citing *Williams v. Taylor*, 529 U.S. 362, 412–13, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000)). A state court decision involves an "unreasonable application of clearly established federal law" if prior Supreme Court decisions "clearly require[d] the state court" to reach a different result. *Kernan v. Cuero*, 583 U.S. 1, 3, 138 S. Ct. 4, 199 L. Ed. 2d 236 (2017). A state court's decision is reasonable "so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004)). In addition, "a determination of a factual issue made by a State court shall be presumed to be correct," and the petitioner bears "the burden of rebutting the presumption of correctness by clear and convincing evidence." § 2254(e)(1).

**B. Ineffective-Assistance-of-Counsel Principles**

To prevail on a claim of ineffective assistance of counsel, a habeas petitioner must demonstrate (1) that his counsel's performance was deficient and (2) a reasonable probability that the deficient performance prejudiced the defense. *See Strickland v. Washington*, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). If the petitioner cannot meet one of *Strickland*'s prongs, the Court need not address the other prong. *Id.* at 697; *Brown v. United States*, 720 F.3d 1316, 1326 (11th Cir. 2013).

To satisfy the first prong—deficient performance—Petitioner must demonstrate that "no competent counsel would have taken the action that his counsel did take." *Gordon v. United States*, 518 F.3d 1291, 1301 (11th Cir. 2008) (citations omitted). "Judicial scrutiny of counsel's performance must be highly deferential," *Strickland*, 466 U.S. at 689, and courts "must avoid second-guessing counsel's performance." *Chandler v. United States*, 218 F.3d 1305, 1314 (11th Cir. 2000). Moreover, a petitioner must provide factual support for his claims regarding counsel's performance. *See Smith v. White*, 815 F.2d 1401, 1406–07 (11th Cir. 1987). Bare, conclusory allegations of ineffective assistance do not satisfy *Strickland*. *See Boyd v. Comm'r, Ala. Dep't of Corr.*, 697 F.3d 1320, 1333–34 (11th Cir. 2012).

To satisfy the second prong—prejudice—Petitioner must show a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "That

the errors had some conceivable effect on the outcome of the proceeding is insufficient to show prejudice." *Butcher v. United States*, 368 F.3d 1290, 1293, 95 Fed. Appx. 1290 (11th Cir. 2004) (quotation and alteration omitted).

## III. DISCUSSION

### A. Ground One: Counsel's Failure to Object to the Introduction of Uncharged Acts

In Ground One, Petitioner alleges that his attorney was ineffective for failing to object to the State's introduction of uncharged acts under the *Williams* rule[2] and Fla. Stat. § 90.404. At trial, the State introduced three uncharged allegations of molestation: (1) D.B. testified that during the shower incident that formed the basis of Count 3, Petitioner also forced her to wash his penis; (2) D.B. testified that during a second, separate shower incident, Petitioner washed her breasts, butt, and vagina; and (3) D.B. testified that during the second shower incident, Petitioner forced her to wash his penis. The State filed a notice of these new allegations shortly before trial but failed to comply with the procedures for

2. The "*Williams* rule," *see Williams v. State*, 110 So. 2d 654 (Fla. 1959), codified at Fla. Stat. § 90.404, provides that evidence of similar acts by the defendant, known as "collateral crime evidence," is admissible if relevant, except to prove bad character or propensity. *Id.* § 90.404(2)(a); *McLean v. State*, 934 So. 2d 1248, 1255 (Fla. 2006). Evidence of uncharged crimes is admissible as non-*Williams* rule evidence, however, if it is "inextricably intertwined" with the charged crimes. *Griffin v. State*, 639 So. 2d 966, 968 (Fla. 1994).

introducing *Williams* rule evidence. Resp't Ex. AN [ECF No. 10-4 at 7].

The state trial court granted relief on this claim. Resp't Ex. AN [ECF No. 10-4 at 3–8]. It found that while D.B.'s first allegation was admissible as non-*Williams* rule evidence because it was "inextricably intertwined" with Count 3, her second and third allegations concerned a separate incident and were not "inextricably intertwined" with any charged conduct. *Id.* at 6–7. Therefore, these allegations should have been excluded as improperly noticed *Williams* rule evidence. *Id.* The court concluded that Petitioner's counsel performed deficiently by failing to object and that the "testimony regarding the uncharged acts of sexual misconduct was extremely prejudicial." *Id.* at 8. The court agreed with Petitioner that "there is a reasonable probability that the jury found him guilty of Count 4 based on an aggregate of the allegations against him rather than because the State proved Count 4 beyond a reasonable doubt." *Id.* The court reasoned that "[t]he sheer number of allegations against [Petitioner] may have convinced the jury that [he] was a bad person, and that some form of sexual misconduct must have occurred." *Id.*

The Third DCA reversed. It agreed with the trial court that Petitioner's counsel was ineffective and that the second and third allegations of sexual misconduct should have been excluded.[3] *Woodruff*, 346 So. 3d at

3. The State does not challenge this aspect of the trial and appellate courts' rulings and this Court assumes, without deciding, that Petitioner's trial counsel performed deficiently under *Strickland*.

1243. But the Third DCA held that Petitioner failed to satisfy *Strickland*'s prejudice prong. *Id.* It found that the collateral crimes evidence did not prejudice Petitioner because it "did not relate to the only charge that resulted in a conviction." *Id.* at 1240. The court explained that "the jury found [Petitioner] guilty only of Count 4, based on the touching of the victim's vagina in the bedroom, before the first shower." *Id.* at 1243. However, "the jury *acquitted* [Petitioner] of Count 3 (the first shower incident) even though the improper collateral crime evidence (the uncharged second shower incident) served only to bolster the victim's credibility (or discredit [Petitioner's] denial) as to the charged first shower incident." *Id.* (emphasis added). The Third DCA thus concluded that because "the collateral crimes evidence at issue related only to acts that [Petitioner] was ultimately acquitted of . . . there is no reasonable probability that counsel's failure to object to the admission of the improper *Williams* rule evidence affected the outcome of this proceeding." *Id.*

Petitioner argues that this decision was both a misapplication of federal law and an unreasonable determination of the facts. First, he contends that the Third DCA applied an incorrect legal standard when it framed the *Strickland* prejudice inquiry as "a question of law reviewed *de novo*," rather than a mixed question of law and fact. [ECF No. 3 at 19]; *see Strickland*, 466 U.S. at 698 (stating that the prejudice inquiry presents "mixed questions of law and fact"). Petitioner argues that the Third DCA then applied this incorrect standard by failing to defer to the trial court's factual findings. [ECF No. 3 at 19].

*Appendix B*

The Third DCA did not misapply *Strickland*. Both the deficient-performance and prejudice prongs of *Strickland* "present mixed questions of law and fact reviewed *de novo* on appeal," *Cade v. Haley*, 222 F.3d 1298, 1302 (11th Cir. 2000), while findings of fact "are subject to the clearly erroneous standard of Federal Rule of Civil Procedure 52(a)," *Strickland*, 466 U.S. at 698. The Third DCA correctly articulated this standard in its opinion. *See Woodruff*, 346 So. 3d at 1241 ("Appellate review of a postconviction motion alleging ineffective assistance of counsel presents a mixed question of law and fact, whereby we defer to the trial court's findings of fact if supported by competent, substantial evidence but review the court's conclusions of law *de novo*."). It then reasonably applied this *de novo* standard of review to reverse the trial court's finding that Petitioner was prejudiced by the erroneous admission of *Williams* rule evidence. Even though, as Petitioner points out, the Third DCA stated elsewhere in its opinion that the *Strickland* prejudice inquiry is "a question of law," a state court's misstatement of a legal principle does not make its decision "contrary to" clearly established federal law where, as here, the court in substance applied the correct standard. *See Ventura v. Att'y Gen., Fla.*, 419 F.3d 1269, 1284 (11th Cir. 2005) ("A misstatement of a standard whose substance a court applies correctly" does not make the decision "contrary to" clearly established federal law. "A habeas court's focus is properly on the substance rather than the form of the state court's decision.").

In particular, the Third DCA took issue with the trial court's *legal* conclusion that "[t]he erroneous

admission of evidence of collateral crimes is presumptively harmful." Resp't Ex. AN [ECF No. 10-4 at 8]. The Third DCA correctly pointed out that "[w]hile an erroneous admission of *Williams* rule evidence is 'presumed harmful error,'" prejudice under *Strickland* presents a different question—one for which there is no presumption—that is "separate and apart from any determination of error." *Woodruff*, 346 So. 3d at 1243; *see also United States v. Cronic*, 466 U.S. 648, 659, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) (holding that prejudice from counsel's errors cannot be presumed except in three narrow circumstances). In finding prejudice, the trial court relied on two cases—*McCall v. State*, 941 So. 2d 1280, 1283 (Fla. 4th DCA 2006) and *McLean v. State*, 934 So. 2d 1248, 1262 (Fla. 2006)—both of which involved direct appeals in which a presumption of prejudice from erroneously admitted evidence applies. The Third DCA rightly found that the trial court incorrectly applied this presumption in the *Strickland* prejudice context.

Moreover, Petitioner is incorrect that the Third DCA failed "to make mention or give deference to" the trial court's factual findings. [ECF No. 3 at 19]. Most of the findings he claims were entitled to deference were, in fact, mixed legal and factual findings of prejudice that were subject to a *de novo* standard of review.[4] The only

4. Petitioner lists four findings by the trial court: "(1) 'testimony regarding the uncharged acts of sexual misconduct was extremely prejudicial', (2) 'credibility was the prime issue because there was no confession and no physical evidence to corroborate D.B.'s version of events', (3) 'there is a reasonable probability that the jury found him guilty of Count 4 based on

purely factual finding he cites—that "credibility was the prime issue" at trial—was not rejected by the Third DCA. Indeed, the Third DCA noted that credibility was a prime issue in finding that "the jury was able to weigh the victim's credibility against [Petitioner's] and make an independent determination about his guilt as to each individual charge[.]" *Woodruff*, 346 So. 3d at 1243. The Third DCA, as it was permitted to do, rejected the trial court's mixed legal and factual conclusion that Petitioner was prejudiced by "[t]he sheer number of allegations" of sexual misconduct. Resp't Ex. AN [ECF No. 10-4 at 8]. In sum, the Third DCA did not apply an incorrect standard for *Strickland* prejudice.

Second, Petitioner argues that the Third DCA's decision was contrary to, or involved an unreasonable application of, federal law because it "improperly interpret[ed] the jury's verdicts instead of considering the totality of the circumstances." [ECF No. 3 at 20]. Petitioner relies on two cases—*United States v. Powell*, 469 U.S. 57, 105 S. Ct. 471, 83 L. Ed. 2d 461 (1984) and *Dunn v. United States*, 284 U.S. 390, 52 S. Ct. 189, 76 L. Ed. 356 (1932)—both of which are inapposite.[5] These

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an aggregate of the allegations against him rather than because the State proved Count 4 beyond a reasonable doubt', [and] (4) '[t]he sheer number of allegations against the Defendant may have convinced the jury that the Defendant was a bad person, and that some form of sexual misconduct must have occurred.'" [ECF No. 3 at 19]. All but one of these findings involved the conclusion that Petitioner suffered prejudice.

5. Petitioner also relies on a Florida Supreme Court case, but a misapplication of state law is not a basis for federal habeas relief. *Branan v. Booth*, 861 F.2d 1507, 1508 (11th Cir. 1988).

cases limit a federal court's power to vacate inconsistent verdicts based on the rationale that "[c]ourts have always resisted inquiring into a jury's thought processes." *Powell*, 469 U.S. at 67. *Powell* and *Dunn* have no bearing on this case because the verdict in this case was not inconsistent and was never challenged as such. Petitioner points to no case extending *Powell* and *Dunn* to the ineffective-assistance context, and the decisions themselves have no relevance to such claims. The Third DCA's holding was a straightforward application of *Strickland*, which simply asks whether there is a reasonable probability that the jury's verdict would have been different but for trial counsel's errors. 466 U.S. at 694. In finding a lack of prejudice, the Third DCA properly considered the evidence before the jury and determined that it would have convicted Petitioner of touching the victim in the bedroom even without the testimony about the second, uncharged shower incident. This is precisely what *Strickland* requires courts to do: to ask what the verdict would have been absent defense counsel's errors. Indeed, Petitioner acknowledges that the trial court's finding of prejudice was just as much an "interpretation" of the jury's verdict as the Third DCA's decision. *See* [ECF No. 3 at 23] ("The record on this point just as much supports an interpretation of the jury deciding that [Petitioner] must have been guilty of something by virtue of the volume of allegations."). In short, the Third DCA's decision did not contravene *Powell* and *Dunn* because those decisions do not apply here.

Third, Petitioner argues that the Third DCA's decision involved an unreasonable determination of the facts

because it mischaracterized certain evidence. The Third DCA reasoned that Petitioner was not prejudiced by D.B.'s testimony about the second, uncharged shower incident because that incident "related only to acts that [Petitioner] was acquitted of[.]" The Third DCA was referring to Count 3, which covered the first shower incident and of which Petitioner was acquitted. Petitioner claims that the second shower incident did not relate *only* to acts of which he was acquitted because D.B. alleged that during the first shower incident (Count 3) Petitioner committed another act—forcing her to touch his penis—that was never charged. Petitioner states that "while [he] was acquitted of the charged conduct related to first shower in Count 3 . . . Count 3 did not cover the uncharged act of [the] alleged victim touching [Petitioner's] penis during the first shower." [ECF No. 3 at 23].

Petitioner's argument is unclear and seems to be splitting hairs. The Eleventh Circuit has instructed courts not to "engag[e] in a line-by-line critique of the state court's reasoning" in federal habeas cases. *Meders v. Warden, Georgia Diagnostic Prison*, 911 F.3d 1335, 1350 (11th Cir. 2019). Even if the state court "made at least one dubious factual statement," that does not render its ultimate conclusion an unreasonable determination of the facts. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1035, 1042 (11th Cir. 2022) ("Depending on the importance of the factual error to the state court's ultimate decision, that decision might still be reasonable even if some of the state court's individual factual findings were erroneous" (quotation omitted)). While the first shower incident technically included conduct that was

not charged, Petitioner fails to explain how this fact has any bearing on whether he suffered prejudice from D.B.'s testimony about the second shower incident.

In any event, the Third DCA did not mischaracterize the evidence. It simply pointed out that the second shower incident "related" to (*i.e.*, was "associated" with or "comparable" to) Count 3 because both alleged crimes occurred in the shower. *Related*, Merriam-Webster's Thesaurus (2024), https://www.merriam-webster.com/thesaurus/related. Conversely, the second shower incident did not "relate" to Count 4—the only count of which Petitioner was convicted—because that count occurred in the bedroom. The Third DCA reasonably concluded that it was unlikely the jury found Petitioner guilty of Count 4 based on additional evidence of sexual misconduct in the shower if it *acquitted* Petitioner of the charge related to sexual misconduct in the shower. As the Third DCA explained, the jury was able to "make an independent determination about his guilt as to each individual charge (as opposed to simply deciding that [Petitioner] must have been guilty of something by virtue of the volume of allegations)[.]" *Woodruff*, 346 So. 3d at 1243. Any fair reading of the Third DCA's opinion reveals it did not mischaracterize the evidence.

Ultimately, each of Petitioner's arguments take issue with *how* the Third DCA reached its conclusion rather than the conclusion itself. Even if the Third DCA (1) misstated the legal standard for prejudice or failed to defer to the trial court's factual findings, (2) improperly "interpreted" the jury's verdict, or (3) mischaracterized the evidence,

this Court is not bound by "the particular *justifications* that the state court provided." *Pye*, 50 F.4th at 1036 (emphasis in original). "If, as here, the specific reason for a state court's decision to deny habeas relief was that the petitioner wasn't prejudiced by his counsel's deficient performance, [the Court] can, in evaluating whether that reason was reasonable, consider additional rationales that support the state court's prejudice determination." *Id.* (quotations omitted and alterations adopted).

Here, the Third DCA's finding of a lack of prejudice is supported by the simple rationale that the trial evidence, even without D.B.'s testimony about a second shower incident, was sufficient to support the jury's verdict as to Count 4. D.B. testified that Petitioner touched her vagina during the bedroom incident, and the jury was entitled to find her credible. Petitioner testified in his own defense, denying this allegation. "A defendant who chooses to testify runs the risk that the jury will disbelieve [his] testimony, and 'runs the risk that if disbelieved the jury might conclude the opposite of [his] testimony is true.'" *United States v. Mateos*, 623 F.3d 1350, 1362 (11th Cir. 2010) (quoting *United States v. Brown*, 53 F.3d 312, 314 (11th Cir. 1995) (alterations adopted)). Petitioner also admitted to skinny dipping with D.B. and, although he denied touching her, admitted to having her spread her legs in the bedroom in response to her questions about anatomy. Petitioner further admitted that he never told D.B.'s mother about that incident. The jury was entitled to infer from this testimony that Petitioner engaged in the criminal behavior alleged by D.B. Because there was sufficient evidence to support the jury's verdict without the

inadmissible *Williams* rule evidence, Petitioner has not demonstrated that the Third DCA's decision was contrary to, or involved an unreasonable application of, federal law or was based on an unreasonable determination of the facts. Accordingly, Ground One is without merit.

### B. Ground Two: Counsel's Failure to Request a Curative Instruction Regarding the Phrase "Sexual Gratification"

In Ground Two, Petitioner alleges that his defense counsel performed deficiently by failing to object or request a special or curative instruction in response to the prosecutor's statement during closing argument that sexual gratification "is simply not an element. We do not have to prove any sexual gratification that the defendant had" from the alleged crimes of sexual battery and lewd or lascivious molestation. Trial Tr. [ECF No. 10-10 at 28]. Petitioner contends that the phrase "sexual gratification" is synonymous with the words "lewd" and "lascivious" and, therefore, the prosecutor's statement misled the jury. Petitioner argues that his counsel should have requested an instruction that informed the jury that "the often used phrase, sexual gratification, is synonymous with the words lewd or lascivious and, therefore, a required element that had to be proved by the State beyond a reasonable doubt." [ECF No. 3 at 26].

The state trial court denied this claim, finding that Petitioner's counsel was not ineffective for failing to object or request a curative instruction because "[s]exual gratification is not included in the elements the

State was required to prove in this case." Resp't Ex. AM [ECF No. 10-3 at 140]. The trial court explained, "[t]he jury instructions that were given in this case properly defined the elements of the offense" and "[w]hen the jury instructions are proper, a failure to object to them does not constitute ineffective assistance of counsel." *Id.* at 140–41.

Petitioner argues that the trial court "did not correctly address [his] claim" because "[t]he claim did not regard the instructions given, but the failure to take corrective action when the State misstated the law during closing argument." [ECF No. 3 at 27]. Petitioner argues that while the instructions given in this case were correct, an additional, curative instruction was required after the prosecutor erroneously said that the State did not need to prove sexual gratification. *Id.* at 27–28. Petitioner contends that once this misstatement of the law occurred, "[d]efense counsel could not just rely on the standard jury instructions given[.]" *Id.* at 28.

The trial court did not fail to address this claim, and its denial of the claim was reasonable. The trial court's holding rested on its conclusion that the phrase "[s]exual gratification is not included in the elements the State was required to prove in this case." Resp't Ex. AM [ECF No. 10-3 at 140]. The trial court therefore found that because the prosecutor did not misstate the law, Petitioner's counsel could not have been ineffective for failing to object to the prosecutor's statement or request a curative instruction. *Id.* This holding was correct; "it is axiomatic that the failure to raise non-meritorious issues does not constitute ineffective assistance." *Bolender v. Singletary*, 16 F.3d 1547, 1573 (11th Cir. 1994).

This Court must defer to the trial court's ruling because it was grounded in state law. Petitioner's claim turns on whether the phrase "sexual gratification" was, in fact, a required element the State had to prove to obtain a conviction for lewd or lascivious molestation under Florida law. Where an ineffective-assistance-of-counsel claim turns on an issue of state law, this Court must defer to the state court's interpretation of its own law. *See Pinkney v. Sec'y, Dep't of Corr.*, 876 F.3d 1290, 1295 (11th Cir. 2017) ("although 'the issue of ineffective assistance—even when based on the failure of counsel to raise a state law claim—is one of constitutional dimension,' [courts] 'must defer to the state's construction of its own law' when the validity of the claim that [trial] counsel failed to raise turns on state law" (quoting *Alvord v. Wainwright*, 725 F.2d 1282, 1291 (11th Cir. 1984))); *Agan v. Vaughn*, 119 F.3d 1538, 1549 (11th Cir. 1997) ("state courts are the final arbiters of state law, and federal habeas courts should not second-guess them on such matters.").

Moreover, even if the state trial court's findings were unreasonable or it failed to address this claim entirely, it still fails under a *de novo* review. *See McGahee v. Ala. Dep't of Corr.*, 560 F.3d 1252, 1266 (11th Cir. 2009) (where "a state court decision is an unreasonable application of federal law under 28 U.S.C. § 2254(d), [courts] are unconstrained by § 2254's deference and must undertake a *de novo* review of the record"); *Bellizia v. Fla. Dep't of Corr.*, 614 F.3d 1326, 1328 n.1 (11th Cir. 2010) (where a state court fails to address the merits of a claim, the federal court reviews the claim *de novo*, rather than under the deferential standard of § 2254(d)(1)). Assuming

Petitioner's counsel should have objected or requested a curative instruction, Petitioner still cannot show prejudice from his counsel's failure to do so. Before closing arguments, the trial court instructed the jury that "what the attorneys say is not evidence or your instructions on the law." Trial Tr. [ECF No. 10-10 at 8]. After closing arguments, the court instructed the jury on the elements of sexual battery and lewd and lascivious molestation, and Petitioner concedes that these instructions were correct. *Id.* at 85–89. Jurors are presumed to follow a court's instructions. *See Hammond v. Hall*, 586 F.3d 1289, 1334 (11th Cir. 2009). The Eleventh Circuit and district courts within it have consistently held that a habeas petitioner is not prejudiced by his counsel's failure to object to a prosecutor's improper closing argument where the trial court instructed the jury that what the lawyers say during closing arguments is not evidence. *See, e.g.*, *Smith v. Pulaski SP Warden*, 809 F. App'x 712, 718 (11th Cir. 2020) (finding a lack of prejudice from a prosecutor's closing remarks because "although the trial court did not issue a specific curative instruction, it did instruct the jury that closing arguments do not constitute evidence, and we presume a jury will follow the instructions given to it"); *Knighton v. Sec'y, Fla. Dep't of Corr.*, No. 16-16695-A, 2017 U.S. App. LEXIS 22402, 2017 WL 5151694, at *6 (11th Cir. Oct. 19, 2017) ("even assuming, *arguendo*, the prosecutor's comments were improper, Knighton cannot establish prejudice because the jury was properly instructed, prior to the closing arguments, that the attorneys' statements made during closing argument were not evidence"); *Emery v. Sec'y of Fla. Dep't of Corr.*, No. 3:07-CV-440-J-34-JBT, 2010 U.S. Dist. LEXIS 98260,

2010 WL 3565715, at *12 (M.D. Fla. Sept. 9, 2010) (finding a lack of prejudice from a prosecutor's improper closing remarks because "[a]ttorneys are permitted wide latitude in their closing arguments, and the record reflects that the trial judge instructed the jury that the attorneys were not witnesses in the case, and therefore their statements and arguments were not evidence"); *Dombrowski v. Fla.*, No. 16-CV-14337-RLR, 2017 U.S. Dist. LEXIS 205880, 2017 WL 11487296, at *43 (S.D. Fla. Dec. 13, 2017) (same).

Furthermore, the record does not reveal a reasonable probability that the jury regarded the prosecutor's remarks as lessening the State's burden because it acquitted Petitioner of three of the four charges: the most serious charge of sexual battery and two of the three lewd and lascivious molestation counts. *See Smith*, 809 F. App'x at 718 ("the record suggests the jury was not taken in by the prosecutor's stunt, as Smith was acquitted of some of the more serious charges, including malice murder.").

And crucially, as discussed in Ground One, *supra*, the evidence was sufficient to support Petitioner's conviction as to Count 4, even without the prosecutor's remark about "sexual gratification." *See id.* (finding a lack of prejudice from the prosecutor's remarks because "most importantly, the record shows the state presented overwhelming evidence from which the jury could have found beyond a reasonable doubt that Smith committed the crimes for which she was convicted."). Petitioner argues that juror Arnold's post-verdict testimony raising doubts about whether the conduct was "lewd" shows that Petitioner was prejudiced by the prosecutor's comment, as this comment

confused the jury about the elements the State needed to prove. [ECF No. 3 at 28]. But the fact that Arnold testified that he specifically considered the lewd element shows he was not confused about what the State needed to prove. Arnold testified that although he "failed to [] get more information about . . . the meaning of lewd," he understood that "the state of mind [or] [t]he motivation" of the defendant was an element of Count 4. Hr'g Tr. [ECF No. 10-12 at 8]. In other words, Arnold's testimony shows that he understood that the State needed to prove not only that Petitioner touched the victim, but that he did so in a "lewd" or "lascivious" manner. Arnold never testified that he or any of the other jurors were confused about the elements the State needed to prove. Thus, Arnold's testimony does not show that the prosecutor's remark misled or confused the jury. Accordingly, even under a *de novo* review, Petitioner cannot show prejudice from his counsel's failure to object or request a curative instruction on the phrase "sexual gratification."

### C. Ground Three: Counsel's Failure to Object to Improper Bolstering Testimony

In Ground Three, Petitioner alleges that his trial counsel was ineffective for failing to object to statements by two law enforcement officers, Detective Manuel Cuervo and Special Agent Brian Farmer, that vouched for D.B.'s credibility and the veracity of her allegations. [ECF No. 3 at 31–32]. Detective Cuervo, the Monroe County Sheriff's detective who investigated the case, testified at trial as follows:

[Prosecutor]: And during these trainings, have you become comfortable or have you become experienced with how to develop probable cause in a sexual crime type of investigation?

[Det. Cuervo]: I feel fairly comfortable, yes. You get comfortable through the experience unfortunately of investigating the crimes. The classes teach you the various techniques to use in regard to those crimes and then you become comfortable, if you want to call it that, during your experience of actually investigating the crimes and becoming confident in those aspects.

. . .

Well, I reviewed the information obviously from both sides and I document that. I bring the case to the attention of - I brought the case to the attention of the State Attorney's Office and discussed the information, and **we established that we had probable cause to**

> **believe the incident occurred**. I subsequently prepared an arrest warrant for the Defendant, Mr. Woodruff, and entered that into our warrants division.

Trial Tr. [ECF No. 10-7 at 59–67].

Special Agent Brian Farmer, a special agent who investigates crimes for the United States Army, conducted a recorded interview with Petitioner while he was deployed in Afghanistan that was played for the jury. During the interview, Special Agent Farmer said to Petitioner:

> [S.A. Farmer]: [Y]ou know, our concern is, is the stuff that she said is not something, you most, most 13-year-olds or 12-year-olds, you know, would say, which raises some red flags.
>
> . . .
>
> But basically, like I said, we're - - **some of the things that she said, it seems just very believable. You know, it's very difficult to - - to explain away**.

Trial Tr. [ECF No. 10-8 at 111–17].

*Appendix B*

Petitioner first contends that Detective Cuervo's statement about probable cause constituted improper bolstering because it "implie[d] that the prosecution against [him] would not have been commenced, and that law enforcement and the prosecutor personally would not have participated, unless they believed and had already determined that the allegations were true." [ECF No. 3 at 33–34]. Second, Petitioner argues that Special Agent Farmer's statements, although presented through a video-taped interview, still constituted improper bolstering because they represented "his opinion as to the ultimate fact to be decided by the jury"—that D.B. was telling the truth. *Id.* at 34 (quoting *Mohr v. State*, 927 So. 2d 1031 (Fla. 2d DCA 2006)). Petitioner stresses that "it is especially harmful for a law enforcement witness to give his opinion of a witness' credibility because of the great weight afforded to their testimony." [ECF No. 3 at 35].

The trial court reasonably found that the statements by Detective Cuervo and Special Agent Farmer, when read in context, did not improperly bolster D.B.'s credibility or vouch for her allegations. Resp't Ex. AM [ECF No. 10-3 at 141–42]. First, Detective Cuervo's statements came in response to questions about how he conducted his investigation and established probable cause for Petitioner's arrest. Detective Cuervo was not offering his own opinion on whether he found the allegations credible, so there was little danger that the jury based its credibility determinations on his testimony. *See United States v. Aplesa*, 690 F. App'x 630, 637 (11th Cir. 2017) (finding that a government witness's testimony did not prejudice the defendant because the witness "did not directly offer

a judgment about [another witness's] credibility or the credibility of cooperating witnesses generally, so there was little danger that the jury would substitute [the witness's] judgment about [the other witness's] credibility for its own through the contested testimony." (quotation omitted)). Detective Cuervo was permitted to testify about his investigation and why the government believed there was probable cause to issue an arrest warrant. *See United States v. Hayden*, 511 F. App'x 870, 875 (11th Cir. 2013) (finding no error in admitting a detective's statement about discovering videos that were "illegal in nature" in child pornography prosecution "because [the statement] was presented as a background detail to explain why [the detective] became involved in the pertinent investigation rather than a genuine opinion on [the defendant's] ultimate guilt").

Second, Special Agent Farmer's statement that D.B. was "very believable," when read in context, was clearly an interrogation tactic designed to get Petitioner to confess to the alleged crimes. *See Howard v. McNeil*, No. 3:07-CV-436-LAC-WCS, 2009 U.S. Dist. LEXIS 3121, 2009 WL 724016, at *9 (N.D. Fla. Jan. 16, 2009) (denying a habeas petitioner's claim that his attorney was ineffective for failing to object to testimony by a detective "that he told Petitioner that he believed that the victim was telling the truth" because "the jury would reasonably have understood that the statements by [the detective] were, as he testified, in pursuit of an interview technique, and were not intended to prove that the victim was credible."). Moments before he made this purportedly objectionable statement, Special Agent Farmer said to

Petitioner, "I want to find out what did, what didn't happen. What - - what happened, you know, what was going on that summer. You know, and that way, it can be looked at and we can address it, you know? And you can move on." Trial Tr. [ECF No. 10-8 at 114]. Special Agent Farmer then reiterated, "We want to get it behind you. You know, that's the biggest thing right now is I want to try and help you out, get this - - get all this kind of wrapped up and get it behind you, get it over with." *Id.* at 116–17. Immediately following these comments, Special Agent Farmer said to Petitioner, "But basically, like I said, we're -- some of the things that she said, it seems just very believable. You know, it's very difficult to explain away." *Id.* at 117. When placed in this context, Special Agent Farmer's statement was meant to elicit a confession from Petitioner, and no reasonable juror would have interpreted it as an opinion on D.B.'s credibility or Petitioner's guilt.

Moreover, Petitioner's counsel had reasonable strategic reasons not to object to Special Agent Farmer's recorded statements. *See Strickland*, 466 U.S. at 681 ("strategic choices about which lines of defense to pursue are owed deference commensurate with the reasonableness of the professional judgments on which they are based"). During his closing argument, Petitioner's counsel highlighted the interrogation, emphasizing that Petitioner "was badgered over and over and over and over" by Special Agent Farmer yet repeatedly denied the allegations. Trial Tr. [ECF No. 10-10 at 41]; *see Thomas v. United States*, 596 F. App'x 808, 810 (11th Cir. 2015) (holding that defense counsel had strategic reasons not to object to allegedly improper bolstering testimony where counsel "argued, in closing,

that the victim was not credible, relying in part on that testimony."). Having the jury hear the portion of the recording in which Special Agent Farmer attempted to elicit a confession from Petitioner was a reasonable choice in light of defense counsel's closing argument. Because there were reasonable strategic reasons not to object to Special Agent Farmer's statements, Petitioner's counsel was not ineffective.

Finally, even if defense counsel did perform deficiently, Petitioner cannot show prejudice. The evidence was sufficient to support Petitioner's conviction on Count 4 even without the allegedly bolstering statements. *See Thomas*, 596 F. App'x at 810 ("even if counsel performed deficiently by failing to object to the credibility-bolstering testimony, Thomas did not demonstrate that his defense was prejudiced by that failure because the government presented strong evidence of his guilt"); *McCloud v. Sec'y, Fla. Dep't of Corr.*, No. 22-10671, 2024 U.S. App. LEXIS 8241, 2024 WL 1480215, at *2 (11th Cir. Apr. 5, 2024) (finding that the petitioner could not show prejudice because "[e]ven if the trial court had excluded the expert's testimony directly commenting on [the victim's] truthfulness, plenty of other evidence introduced at trial supported the jury's conclusion that McCloud sexually abused [the victim]."). As discussed, D.B.'s and Petitioner's testimonies provided the jury with enough evidence from which to find Petitioner guilty of Count 4. Moreover, the statements that allegedly bolstered D.B.'s credibility were isolated comments that almost certainly had no impact on the jury's verdict. Detective Cuervo's comment that "we established that we had probable cause to believe the

incident occurred" was made in passing while discussing his involvement in the investigation, and he otherwise made no comments about the veracity of the allegations. Likewise, Special Agent Farmer's statement that D.B. was "very believable" was made in passing during a two-and-a-half hour-long recorded interview, and he also made no other comments alluding to the veracity of her allegations. If the jury had been swayed by either statement to find D.B. credible, it likely would not have acquitted Petitioner of three of the four counts. In sum, Petitioner's third ground is without merit.

### D. Ground Four: Counsel's Failure to Introduce Evidence of the Victim's Prior Lie

In Ground Four, Petitioner alleges that his counsel was ineffective for failing to introduce evidence of D.B.'s prior lie about being pregnant after the State opened the door to its admission. [ECF No. 3 at 35–41]. Prior to trial, the State filed a motion *in limine* to prohibit Petitioner from eliciting the fact that approximately four years after the alleged offenses, D.B. helped spread a false rumor through her school that she was pregnant. Resp't App. D [ECF No. 10-2 at 21]; *see also* Trial Tr. [ECF No. 10-7 at 13–14]. At the pretrial hearing on the motion, defense counsel argued that because D.B.'s dishonesty was an essential element of Petitioner's defense, he "should be able to use specific instances of her conduct to show that she has engaged in dishonesty." Trial Tr. [ECF No. 10-7 at 18]. The trial court granted the State's motion and prohibited defense counsel from eliciting this fact. The court explained that while the "credibility of a victim is an

essential element of virtually every defense," the Florida Evidence Code could not be read so broadly as to allow the introduction of any specific instance where the victim had lied. *Id.* at 19–20; *see also* Fla. Stat. § 90.405(2) ("When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of that person's conduct."). The Third DCA affirmed this ruling. *Woodruff*, 208 So. 3d at 1266.

Petitioner argues that even if D.B.'s prior lie was initially inadmissible, the State opened the door to its admission when it questioned D.B. about whether she understood the difference between the truth and a lie. At the beginning of D.B.'s direct examination, the prosecutor and D.B. engaged in the following colloquy:

| | |
|---|---|
| [Prosecutor]: | Now do you understand the difference between telling the truth and telling a lie? |
| [D.B.]: | Yes. |
| [Prosecutor]: | And what does it mean [to] tell the truth? |
| [D.B.]: | That something that's right, that happened. |
| [Prosecutor]: | And what does it mean to tell a lie? |
| [D.B.]: | Something that's not right and didn't happen. |

| | |
|---|---|
| [Prosecutor]: | Now can you give an example of either a truth or a lie? |
| [D.B.]: | It's true that the lights are on. |
| [Prosecutor]: | And why is that true? |
| [D.B.]: | Because the lights are on. |
| [Prosecutor]: | And do you understand that you were just given an oath before testifying? |
| [D.B.]: | Yes. |
| [Prosecutor]: | And do you understand what that is asking of you? |
| [D.B.]: | Yes. |
| [Prosecutor]: | And do you understand that there are consequences for not telling the truth? |
| [D.B.]: | Yes. |

Trial Tr. [ECF No. 10-7 at 83–84]. Petitioner's counsel objected to these questions as bolstering, which the trial court overruled. *Id.* at 84.

Petitioner argues that the above colloquy bolstered D.B.'s credibility and opened the door for his attorney

to cross-examine her about her prior lie about being pregnant. Petitioner thus contends that his defense counsel was ineffective for failing to do so and that he suffered prejudice as a result because the State's case hinged on D.B.'s credibility.[6]

The state trial court denied this claim, finding that the colloquy did not constitute improper bolstering and, therefore, "did not open the door to the admissibility of D.B.'s prior lie." Resp't App. AM [ECF No. 10-3 at 142]. The trial court first noted that it had overruled defense counsel's objection to the prosecutor's questions on the ground that they constituted improper bolstering. *Id.* The trial court then explained that these questions were not bolstering because they were "general questions distinguishing whether [D.B.] knew the difference between truth and lies. D.B. was never asked, and never claimed that she had never lied."[7] *Id.*

The state trial court's decision was reasonable. The prosecutor's questions to D.B. were permissible to

6. Petitioner also argues that the testimonies of Detective Cuervo and Special Agent Farmer vouched for D.B.'s credibility and thus opened the door for defense counsel to cross-examine these witnesses about D.B.'s prior lie. But, as discussed in Ground Three, *supra*, the statements of these witnesses were not opinions on D.B.'s credibility and thus did not open the door to questions about her prior lie.

7. Petitioner takes issue with the trial court's alternative reason for rejecting this claim: that it was barred as an attempt to advance an argument that had been rejected on direct appeal. Because the trial court denied this claim on the merits, however, this Court need not address this issue.

establish that she understood her obligation to tell the truth during her testimony. *See Floyd v. State*, 18 So. 3d 432, 444 (Fla. 2009) (finding that questions to a minor witness about whether he "understood the concept of lying, the consequence of lying, and his obligation to tell the truth" were proper in order to establish that the minor was competent to testify). Once the trial court determined that the prosecutor's questions to D.B.'s were proper and did not constitute improper bolstering of her credibility, any claim that the prosecutor had opened the door to questions about her pregnancy lie was foreclosed. *See Rodriguez v. State*, 753 So. 2d 29, 42 (Fla. 2000) ("the concept of 'opening the door' allows the admission of otherwise inadmissible testimony to 'qualify, explain, or limit' testimony or evidence previously admitted"); *Siegel v. State*, 68 So. 3d 281, 288 (Fla. 4th DCA 2011) ("In order to open the door, the witness must offer misleading testimony or make a specific factual assertion which the opposing party has the right to correct so that the jury will not be misled"). And because the trial court would have rejected any claim that the door had been opened, Petitioner's counsel cannot be deemed ineffective for failing to raise a meritless claim. *See Bolender*, 16 F.3d at 1573.

Petitioner's claim ultimately turns on a state-law evidentiary issue, and the state court's ruling on this issue must be accorded deference. *See Taylor v. Sec'y, Fla. Dep't of Corr.*, 760 F.3d 1284, 1295 (11th Cir. 2014) ("federal courts will not generally review state trial courts' evidentiary determinations."). A federal court may grant habeas relief based on a state court's evidentiary ruling only if

the ruling affected the fundamental fairness of the trial. *Sims v. Singletary*, 155 F.3d 1297, 1312 (11th Cir. 1998). "To render a state-court proceeding fundamentally unfair, the excluded evidence must be 'material in the sense of a crucial, critical, highly significant factor.'" *Taylor*, 760 F.3d at 1296 (quoting *Boykins v. Wainwright*, 737 F.2d 1539, 1544 (11th Cir. 1984)). "Such a determination is to be made in light of the evidence as a whole." *Felker v. Turpin*, 83 F.3d 1303, 1312 (11th Cir. 1996).

Petitioner cannot show that the excluded evidence of D.B.'s prior lie was a "crucial, critical, highly significant factor" in the trial because this evidence would have only impeached D.B. on an irrelevant matter. *See Jones v. Goodwin*, 982 F.2d 464, 469 (11th Cir. 1993) (holding that the state trial court did not violate the petitioner's Confrontation Clause right by precluding him from impeaching the victim with her out-of-court lie "because [the lie] would have neither contradicted nor impeached anything [the victim] said while on the witness stand, or, for that matter, anything presented in the state's case"); *Fifield v. Sec'y, Dep't of Corr.*, No. 5:18-CV-309-OC-02-PRL, 2019 U.S. Dist. LEXIS 117409, 2019 WL 3083345, at *6 (M.D. Fla. July 15, 2019) ("[f]or evidence to be relevant for impeachment purposes, it must actually contradict or impeach the witness's testimony at trial or evidence presented in the state's case."). D.B.'s lie about being pregnant occurred four years after the charged offenses, and its subject matter was irrelevant to those offenses. The lie was based on a rumor that was spread at D.B.'s school, and it had nothing to do with Petitioner or the events that formed the basis of his charges. Petitioner's

defense was that D.B. falsely accused him of molestation and sexual battery because she was upset that he would not adopt her and leave his family to live with her and her mom. Petitioner was given a "fair opportunity" to present evidence supporting this defense. *See Taylor*, 760 F.3d at 1296 (holding that excluded testimony did not deny the petitioner a fundamentally fair trial because he "was given a 'fair opportunity' to present other critical evidence in support of his defense that the sexual encounter was consensual."). In short, Petitioner was not denied a fundamentally fair trial by the exclusion of irrelevant evidence about D.B.'s pregnancy lie. Accordingly, Ground Four is without merit.

### E. Ground Five: Counsel's Failure to Object to the Prosecutor's Improper Remarks

In his fifth ground, Petitioner claims that "[t]he State's opening and closing remarks were littered [with] improper remarks." [ECF No. 3 at 41]. Petitioner alleges that his counsel was ineffective for failing to object and move for a new trial when the prosecution (1) appealed to the jury's emotions, (2) denigrated the defense, (3) vouched for the credibility of witnesses, (4) expressed a personal opinion of Petitioner's guilt, and (5) commented on matters not in evidence. *Id.* Petitioner highlights five excerpts from the prosecution's opening and closing statements that he contends contained improper remarks, and he argues that "the cumulative effect of the improper remarks deprived him of a fair trial." *Id.* at 43.

The trial court denied this claim, holding that "[c]laims of prosecutorial misconduct should have been raised on

appeal, but since they were not, they cannot be re-cast as claims of ineffective assistance of counsel in a motion for postconviction relief." Resp't App. AM [ECF No. 10-3 at 143]. Petitioner claims that this decision was in error, as he was not procedurally barred under Florida law from raising an ineffective assistance claim on collateral review regarding his counsel's failure to object to the prosecution's opening and closing statements. [ECF No. 3 at 45].

Even if the state court erred in finding that Petitioner's claim was barred, the claim is nonetheless without merit under a *de novo* review. None of the myriad remarks Petitioner identifies were improper, so his counsel was not ineffective for failing to object to them. Specifically, Petitioner highlights the prosecutor's remarks on the victim's truthfulness, but such remarks were proper given Petitioner attacked the victim's credibility. *See Rowles v. Sec'y, Dep't of Corr.*, No. 21-11838-D, 2021 U.S. App. LEXIS 39844, 2021 WL 7709523, at *2 (11th Cir. Dec. 3, 2021) ("the prosecutor was permitted to suggest that the victim was truthful in closing argument after defense counsel attacked her credibility.")

Moreover, even if certain remarks were improper, to show prejudice from his counsel's failure to object, Petitioner must show that the remarks rose to the level of prosecutorial misconduct and rendered his entire trial fundamentally unfair. *See Muhammad v. McNeil*, 352 F. App'x 371, 377 (11th Cir. 2009) ("where a petitioner was not entitled to relief for prosecutorial misconduct, his attorney's failure to object to that misconduct does not

warrant reversal. . . . Assuming *arguendo* Muhammad's attorney was constitutionally ineffective for failing to object, the statements themselves did not render the trial fundamentally unfair"); *see also Darden v. Wainwright*, 477 U.S. 168, 179, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986); *Donnelly v. DeChristoforo*, 416 U.S. 637, 645, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974).

Petitioner cannot meet this heavy burden. In *Darden*, the Supreme Court held that a prosecutor's closing argument "did not deprive [the] petitioner of a fair trial" even though the prosecutor called the petitioner a "vicious animal," said he should be on a "leash," and told the jury he "wish[ed]" someone had "blown [the petitioner's] head off." *Darden*, 477 U.S. at 180 n.12, 181. And in *Donnelly*, the Supreme Court found no "denial of due process" where a prosecutor told the jury during closing arguments that he "sincerely believe[d] that there [was] no doubt" about the petitioner's guilt and that he suspected that the petitioner stood trial not because he was innocent but because he "hope[d] that you find him guilty of something a little less than first-degree murder." *Donnelly*, 416 U.S. at 640, 643 n.6. Here, the prosecutor's opening and closing remarks did not come close to the remarks at issue in *Darden* and *Donnelly*, and the trial court instructed the jury that what the lawyers say during opening statements and closing arguments is not evidence. *See United States v. Lopez*, 590 F.3d 1238, 1256 (11th Cir. 2009) ("Because statements and arguments of counsel are not evidence, improper statements can be rectified by [an] instruction to the jury that only the evidence in the case be considered."). Therefore, Ground Five is without merit

because Petitioner has not shown that he was denied a fundamentally fair trial.

### F. Ground Six: the Cumulative Effect of Counsel's Errors

Lastly, Petitioner argues that even if his individual claims do not warrant relief, the cumulative effect of his attorney's errors rose to the level of ineffective assistance of counsel and prejudiced him. [ECF No. 3 at 46]. But the Eleventh Circuit has foreclosed such a claim, holding that when "none of [the petitioner's] individual claims of error or prejudice have any merit," there is "nothing to accumulate." *Morris v. Sec'y, Dep't of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012); *see also Wood v. Sec'y, Dep't of Corr.*, 793 F. App'x 813, 818 (11th Cir. 2019) ("the Court has held, in the context of an ineffective-assistance claim, that 'there is generally no basis for finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt.'" (quoting *Cronic*, 466 U.S. at 659 n.26)). Accordingly, Petitioner's sixth ground is also without merit.

## IV. EVIDENTIARY HEARING

In a habeas corpus proceeding "[t]he burden is on the petitioner . . . to establish the need for an evidentiary hearing." *Birt v. Montgomery*, 725 F.2d 587, 591 (11th Cir. 1984) (en banc). "In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would

entitle the applicant to federal habeas relief." *Schriro v. Landrigan*, 550 U.S. 465, 474, 127 S. Ct. 1933, 167 L. Ed. 2d 836 (2007). Therefore, if a habeas petition does not allege enough specific facts that, if true, would warrant relief, the petitioner is not entitled to an evidentiary hearing. *See Allen v. Sec'y, Fla. Dep't of Corr.*, 611 F.3d 740, 763 (11th Cir. 2010) ("Having alleged no specific facts that, if true, would entitle him to federal habeas relief, [the petitioner] is not entitled to an evidentiary hearing.").

Here, Petitioner has not provided enough facts that, if true, would entitle him to habeas relief. Because the Court can "adequately assess [Petitioner's] claim[s] without further factual development," *Turner v. Crosby*, 339 F.3d 1247, 1275 (11th Cir. 2003), an evidentiary hearing is not warranted here.

## V. CERTIFICATE OF APPEALABILITY

Petitioner is advised that he has no absolute right to appeal this Court's final order denying his § 2254 habeas corpus petition; but to do so, he must obtain a certificate of appealability ("COA"). *See Harbison v. Bell*, 556 U.S. 180, 183, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (2009) (citing *Slack v. McDaniel*, 529 U.S. 473, 484–85, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); *Wilkinson v. Dotson*, 544 U.S. 74, 78–83, 125 S. Ct. 1242, 161 L. Ed. 2d 253 (2005)). Thus, when a district court rejects a habeas petitioner's constitutional claims on the merits, he must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *See Slack*, 529 U.S. at 484. Upon consideration of this record, the Court finds that no certificate of appealability shall issue.

**VI. CONCLUSION**

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. The Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [ECF No. 1] is **DENIED**.

2. A Certificate of Appealability is **DENIED**.

3. This case is **CLOSED**, and all pending motions are **DENIED AS MOOT**.

4. A final judgment in Respondent's favor shall enter via separate order.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 21st day of January, 2025.

/s/ Darrin P. Gayles
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

cc: Counsel of record

## APPENDIX C — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, ENTERED JANUARY 21, 2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 4:23-cv-10037-GAYLES

MICHAEL CLAYTON WOODRUFF,

*Petitioner,*

v.

FLORIDA DEPARTMENT OF CORRECTIONS,

*Respondent.*

Entered January 21, 2025

**FINAL JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 58, and in accordance with the reasons stated in the Court's Order Denying 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus, judgment is entered in favor of Respondent and against Petitioner.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 21st day of January, 2025.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

cc: All counsel of record