In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-12418

ATHANAEL J. LOUIS,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
Secretary Florida Department of Corrections,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-23776-KMM

ORDER:

Athanael Louis, a Florida prisoner serving a life sentence for first-degree murder and attempted premeditated murder, seeks a certificate of appealability ("COA"), to appeal the denial of his 28 U.S.C. § 2254 petition. To obtain a COA, Louis must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For claims denied on substantive grounds, he must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, reasonable jurists would not debate the denial of Louis's claim that the trial court erred in denying his motion to suppress certain cell-site location information obtained in violation of the Fourth Amendment (Claim 1). When law enforcement obtained Louis's cell-site location information, there was no binding precedent that Fla. Stat. § 934.23 violated the Fourth Amendment or that a warrant supported by probable cause was required to obtain the information sought. Thus, it was reasonable for law enforcement to rely on § 934.23 to obtain historical cell-site location data without a warrant. *See Illinois v. Krull*, 480 U.S. 340, 349-50 (1987); *see also United States v. Joyner*, 899 F.3d 1199, 1204-05 (11th Cir. 2018).

Next, reasonable jurists would not debate the denial of Louis's claims that the state improperly charged him with first-degree murder and attempted premeditated murder (Claims 4 and 5,

respectively). The trial court had jurisdiction over the felony convictions with which Louis was charged. *See* Fla. Const. art. V, § 20(c)(3). Furthermore, the indictment incorporated the essential elements of statutory first-degree murder and attempted premeditated murder, putting Louis on notice of the charges to be defended against and enabling him to rely upon judgment under the indictment as a bar against double jeopardy. *See United States v. Gbenedio*, 95 F.4th 1319, 1328 (11th Cir. 2024). Thus, the indictment was not "so deficient" as to deprive the court of jurisdiction. *See DeBenedictis v. Wainwright*, 674 F.2d 841, 842 (11th Cir. 1982).

Finally, reasonable jurists would not debate the denial of Louis's claims as to whether his counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984). As to Claim 2, the record demonstrates that counsel did in fact move to exclude the testimony of the two witnesses at issue. As to Claim 3, the surveillance footage was properly authenticated, such that counsel was not ineffective for failing to object to its admission. *See Mullens v. State*, 197 So. 3d 16, 27 (Fla. 2016). As to Claim 6, the firearm and pawn shop receipt were relevant and admissible under Fla. Stat. Ann. §§ 90.402 and 90.403, such that any objection would have failed. Accordingly, as Louis has failed to show the substantial denial of a constitutional right, his COA motion is DENIED.

/s/ Embry J. Kidd

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 1:22-cv-23776-KMM

ATHANAEL J. LOUIS,

Petitioner,

v.

RICKY D. DIXON, Secretary of the Florida Department of Corrections,

Respondent.
_____/

ORDER

THIS CAUSE came before the Court upon Athanael J. Louis's ("Petitioner") *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, attacking the constitutionality of his convictions and sentences entered in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in *State of Florida v. Louis*, No. F13-28045 (Fla. 11th Cir. Ct. 2013). The State of Florida ("State") filed a Response ("Resp.") (ECF No. 18), to the Court's Order to Show Cause (ECF No. 11), along with a supporting appendix (ECF No. 19) and state court transcripts (ECF No. 20). The case is now ripe for review.

I. BACKGROUND

On December 23, 2013, the State charged Petitioner by information with the second-degree murder of Barner Jean-Pierre ("Jean-Pierre") with a deadly weapon in violation of Fla. Stat. § 782.04(2) (Count 1); with two counts of attempted premeditated murder with a deadly weapon or aggravated battery of Stanley Dorvil ("Dorvil") and Eliezer Bateau ("Bateau") in violation of Fla. Stat. § 782.04(1)(a)1 (Counts 2 & 3). (ECF No. 19-1) at 56–60. On October 14, 2015, the

State filed an indictment which amended the charges to increase count one to a charge of first-degree murder of Jean-Pierre in violation of Fla. Stat. § 782.04(1). *Id.* at 62–63.

Petitioner proceeded to trial where the State presented eyewitness testimony and evidence to establish the following facts. (ECF No. 20-2 through 20-14) (hereinafter "T. at ___").

In 2013, Bateau was living with his father at Center Court Apartments in Miami. (T. at 244). Petitioner bought a new cell phone and gave his old phone to Bateau. *Id.* at 112. When that new phone was stolen, Petitioner wanted his old phone back from Bateau, who initially refused. *Id.* Because Petitioner pointed a gun at Bateau and demanded the phone's return, Bateau complied. *Id.* at 114.

Two days later, Bateau confronted Petitioner in the hallway about pulling a gun on him. *Id.* at 115. The two then engaged in a physical altercation, which Bateau won. *Id.* Afterwards, Bateau went upstairs to his father's apartment and when he came back down, Petitioner was holding a gun and flanked by several friends. *Id.* at 116–17. Bateau fled and Petitioner gave chase. *Id.* at 117. Bateau eventually hid in a neighbor's home. *Id.* at 117–18.

On another occasion, Bateau was talking with some friends in the stairwell of the apartment complex when Petitioner opened the door and started shooting. *Id.* at 119–20. Bateau reported the incident to the police. *Id.* Not long after, Bateau decided to leave Miami and moved to his sister's home up north. *Id.* at 55, 124.

After Bateau left town, Bateau's father, Charles Bateau ("Charles"), tried to resolve the dispute between Petitioner and Bateau by asking Petitioner, "What's wrong with you and my son?" *Id.* at 249. Petitioner responded that Bateau had to pay for beating up Petitioner. *Id.* at 249–50.

In mid-November of 2013, Odny Cadet ("Cadet") saw Petitioner in the laundry room of Center Court Apartments. *Id.* at 469–70. Petitioner said he was looking for Bateau because Bateau

had beaten him up. *Id.* at 471–72. Petitioner suggested that he would have murdered Bateau if Bateau had been in the laundry room. *Id.* at 488. Cadet took steps to warn Bateau. *Id.* at 502.

In November of 2013, Bateau and his sister went to visit their father Charles at his home in Center Court Apartments for Thanksgiving. *Id.* at 55, 302. On November 29, 2013, around 7:30 p.m., Bateau, Dorvil, and Jean-Pierre were chatting in the hallway outside of Charles's apartment. *Id.* at 88, 93, 181. All of a sudden, Petitioner started shooting at them. *Id.* at 96. Bateau was not hit and saw that Petitioner was the shooter. *Id.* After taking a couple steps, Barner said, "I think I got shot," and spit up some blood. *Id.* at 195–96, 212. Barner died within a few minutes. *Id.* at 827. A bullet hit Dorvil, who blacked out. *Id.* at 207. Paramedics airlifted Dorvil to the hospital, where he recovered. *Id.*

Officers recovered casings, projectiles, and one .45 automatic pistol with an empty cartridge. *Id.* at 331, 350, 697. The medical examiner removed a .38 projectile from Barner's body. *Id.* at 723–31. On the night of the shooting, Bateau informed law enforcement that Petitioner was the shooter. *Id.* at 109, 111. Officers obtained surveillance video from the Center Court Apartments which showed Petitioner's car entering the premises on the night of the crime. *Id.* at 668–72. Law enforcement also obtained information from the cell phone company which established that Petitioner's phone was in the vicinity of the Center Court Apartments at the time of the shooting. *Id.* at 880.

Defense counsel called Petitioner's girlfriend, Barbara Jocelyn ("Jocelyn"), to testify to the following. On the morning of November 29, 2013, Jocelyn went to Petitioner's house where the two hung out for a few hours. *Id.* at 945, 948–49. In the afternoon, Petitioner and Jocelyn drove to pick up Petitioner's mother from work and dropped her at home. *Id.* at 949–50. Petitioner and Jocelyn remained at his mother's house until 6:30 p.m., at which point, they went to a Movie Stop.

Id. at 949–52. Petitioner then got some gas, and the couple went back to Jocelyn's home. *Id.* at 951–52. They never went to Center Court Apartments. *Id.* at 952–54. Jocelyn had a .357 Magnum gun in her home which belonged to her brother, not to Petitioner. *Id.* at 955–56.

An electronic evidence consultant testified that when a cell phone connects to a tower, it is not necessarily the closest tower. *Id.* at 1005–12, 1022. As a result, law enforcement's evidence that Petitioner's phone pinged off the toward near Center Court Apartments did not prove that Petitioner was at the apartment complex. *Id.*

The jury found Petitioner guilty under Count 1 of first-degree murder of Pierre-Jean, guilty under Count 2 of attempted premeditated murder of Dorvil, and guilty under Count 3 of attempted premeditated murder of Bateau. (ECF No. 19-1) at 69–72. The trial court adjudicated Petitioner guilty and sentenced Petitioner to a term of life in prison for Count 1, and a thirty-year prison term for Counts 2 and 3, with a minimum mandatory twenty-five-year term to run concurrently with each other and concurrently to the sentence imposed under Count 1. *Id.* at 74–84.

Petitioner appealed in Florida's Third District Court of Appeal ("Third DCA"). *Id.* at 86–87. Petitioner alleged that the trial court erred in denying his motion to suppress evidence obtained through a warrantless search of his cell phone. *Id.* at 89–130. Petitioner raises the same argument here under Claim One. *See* Pet. at 5. On February 19, 2020, the Third DCA *per curiam* affirmed without written opinion in *Louis v. State*, 300 So. 3d 149 (Fla. Dist. Ct. App. 2020). Mandate issued March 6, 2020. (ECF No. 19-1) at 87.

On March 10, 2020, Petitioner filed a petition for writ of habeas corpus in the Third DCA. *Id.* at 187. Petitioner raised several claims of ineffective assistance of appellate counsel on direct appeal. (ECF No. 19-2) at 2–15. On November 10, 2020, the Third DCA denied the petition in *Louis v. State*, 348 So. 3d 568 (Fla. Dist. Ct. App. 2020) (stating that "[f]ollowing review of the

pro se 'Petition for Writ of Habeas Corpus Ineffective Appellate Attorney,' and the Response and Reply thereto, it is ordered that said Petition is hereby denied.").

On April 7, 2021, Petitioner returned to the state trial court and filed a motion for post-conviction relief pursuant to Fla. R. Crim. P. 3.850. (ECF No. 19-2) at 48–72. Petitioner alleged in pertinent part that his counsel was ineffective in failing to move to exclude witnesses who only heard about the crime after the fact, in failing to move to suppress surveillance video footage, and in failing to move to exclude several pieces of the State's evidence. *See generally id.* He also alleged that the State improperly charged him with an unclear and confusing Amended Indictment. *See generally id.* Petitioner raises the same arguments here under Claims Two through Six. *See* Pet. at 5–10. The State filed a response in opposition. (ECF No. 19-3) at 8–18. The trial court issued an order denying Petitioner's motion for post-conviction relief. *Id.* at 2–7.

Petitioner appealed. (ECF No. 19-4) at 9–10. The Third DCA *per curiam* affirmed without written opinion in *Louis v. State*, 338 So. 3d 883 (Fla. Dist. Ct. App. 2022). Petitioner filed a motion for rehearing, which the Third DCA denied. (ECF No. 19-3) at 8–9. Mandate issued June 13, 2022. *Id.* at 9. Petitioner sought review in the Florida Supreme Court, which dismissed his case on June 16, 2022. *See Louis v. State*, 2022 WL 2163499 (Fla. June 16, 2022).

On September 1, 2022, Petitioner filed a second petition for writ of habeas corpus in the Third DCA alleging ineffective assistance of appellate counsel on direct appeal. (ECF No. 19-3) at 78–85. The State moved to dismiss the petition. *Id.* at 121–31. The Third DCA granted the State's motion and dismissed the petition as untimely and successive. *See Louis v. State*, 2022 WL 18359520 (Fla. Dist. Ct. App. Oct. 6, 2022).

On November 16, 2022, Petitioner initiated the instant proceedings under § 2254. *See* Pet. Construing the Petition liberally, consistent with *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972), the Petitioner presents the following claims for relief:

> Claim One: The trial court erred in denying his motion to suppress evidence obtained through a warrantless search of his cell phone. Pet. at 5.
>
> Claim Two: Ineffective assistance of counsel for failing to move to exclude witnesses who only heard about the crime after the fact. *Id.* at 7.
>
> Claim Three: Ineffective assistance of counsel for failing to move to suppress surveillance video footage. *Id.* at 8.
>
> Claim Four: The State improperly charged Petitioner with murder under Count 1 of unclear amended indictment. *Id.* at 10.
>
> Claim Five: The State improperly charged Petitioner with attempted premeditated murder under Counts 2 and 3 of unclear amended indictment. *Id.* at 12.
>
> Claim Six: Ineffective assistance of counsel for failing to move to exclude several pieces of the State's evidence. *Id.* at 12.

II. EXHAUSTION AND STATUTE OF LIMITATIONS

The State asserts that the Petition appears to be timely and that all six claims are fully exhausted. Resp. at 19–22, 25, 29, 32, 35, 37, 38.

III. LEGAL STANDARD

This Court's review of a state prisoner's federal petition for habeas corpus is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214. *See Ledford v. Warden, GDCP*, 818 F.3d 600, 642 (11th Cir. 2016), *abrogation recognized on other grounds by Smith v. Comm'r, Ala. Dep't of Corr.*, 67 F.4th 1335, 1348 (11th Cir. 2023). "The purpose of [the] AEDPA is to ensure that federal habeas relief functions as a guard against extreme malfunctions in the state criminal justice systems, and not as a means of error correction." *Id.* (quoting *Greene v. Fisher*, 565 U.S. 34, 38 (2011)). Federal habeas corpus review of final state court decisions is "'greatly circumscribed' and 'highly deferential,'" *id.*

(quoting *Hill v. Humphrey*, 662 F.3d 1335, 1343 (11th Cir. 2011)), and is generally limited to the record that was before the state court that adjudicated the claim on the merits, *id.* (citing *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011)).

The federal habeas court is first tasked with identifying the last state court decision, if any, that adjudicated the claim on the merits. *See Marshall v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1277, 1285 (11th Cir. 2016). The state court is not required to issue an opinion explaining its rationale, because even the summary rejection of a claim, without explanation, qualifies as an adjudication on the merits which warrants deference. *See Harrington v. Richter*, 562 U.S. 86, 100 (2011); *Ferguson v. Culliver*, 527 F.3d 1144, 1146 (11th Cir. 2008); *see also Wilson v. Sellers*, 584 U.S. 122, 125 (2018); *Sexton v. Beaudreaux*, 585 U.S. 861, 964–65 (2018).

Where the claim was "adjudicated on the merits" in the state forum, § 2254(d) prohibits relitigation of the claim unless the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" [1] or, (2) "based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254(d); *Harrington*, 562 U.S. at 97–98; *see also Williams v. Taylor*, 529 U.S. 362, 412–13 (2000). When relying on § 2254(d)(2), a federal court can grant relief if the state court rendered an erroneous factual determination. *Tharpe v. Warden*, 834 F.3d 1323, 1337 (11th Cir. 2016).

Because the "AEDPA erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court," *Burt v. Titlow*, 571 U.S. 12, 19 (2013), "federal courts may grant habeas relief only when a state court blundered in a manner so 'well understood

[1] "Clearly established Federal law" consists of the governing legal principles, rather than the dicta, set forth in the decisions of the Supreme Court at the time the state court issues its decision. *White v. Woodall*, 572 U.S. 415, 419 (2014) (citing *Williams*, 529 U.S. at 412).

and comprehended in existing law' and 'was so lacking in justification' that 'there is no possibility fairminded jurists could disagree,'" *Tharpe*, 834 F.3d at 1338 (11th Cir. 2016) (quoting *Harrington*, 562 U.S. at 102). This standard is intentionally difficult to meet. *Harrington*, 562 U.S. at 102.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the assistance of counsel during criminal proceedings against them. *Strickland v. Washington*, 466 U.S. 668, 684–85 (1984). When assessing counsel's performance under *Strickland*, the court employs a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690.

To prevail on a claim of ineffective assistance of counsel, the petitioner must demonstrate that: (1) counsel's performance was deficient and (2) the petitioner suffered prejudice as a result of that deficiency. *Id.* at 687.

To establish deficient performance, the petitioner must show that, in light of all the circumstances, counsel's performance was outside the wide range of professional competence and "fell below an objective standard of reasonableness." *Id.* at 687–88; *see also Cummings v. Sec'y for Dep't of Corr.*, 588 F.3d 1331, 1356 (11th Cir. 2009). The review of counsel's performance should not focus on what is possible, prudent, or appropriate but should focus on "what is constitutionally compelled." *Burger v. Kemp*, 483 U.S. 776, 794 (1987).

Regarding the prejudice component, the Supreme Court has explained "[t]he defendant must show that there is 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. A court need not address both prongs of *Strickland* if the defendant makes an insufficient showing on one of the prongs. *Id.* at 697. Further, counsel is not ineffective for failing to raise non-meritorious issues.

Chandler v. Moore, 240 F.3d 907, 917 (11th Cir. 2001). Nor is counsel required to present every non-frivolous argument. *Dell v. United States*, 710 F.3d 1267, 1282 (11th Cir. 2013).

Furthermore, a § 2254 Petitioner must provide factual support for his or her contentions regarding counsel's performance. *Smith v. White*, 815 F.2d 1401, 1406–07 (11th Cir. 1987). Bare, conclusory allegations of ineffective assistance are insufficient to satisfy the *Strickland* test. *See Boyd v. Comm'r, Ala. Dep't of Corr.*, 697 F.3d 1320, 1332–34 (11th Cir. 2012).

IV. DISCUSSION

Under **Claim One**, Petitioner alleges that the trial court erred in denying Petitioner's motion to suppress evidence obtained through a warrantless search of his cell phone. Pet. at 5. Specifically, that the state and federal courts have uniformly rejected warrantless cell phone searches and held that cell site location information is protected by the Fourth Amendment. *Id.*

In December of 2013, the State submitted an application to the trial court for an order authorizing disclosure of cell site data pursuant to Fla. Stat. § 934.23 (2013). *See* (ECF No. 19-1) at 95, 143. The State attached several affidavits to the application which set out the facts and explained why the cell site data was relevant to the investigation. *Id.* at 143. On December 10, 2013, the trial court issued an order directing the wireless carrier to turn over the information regarding Petitioner's cell phone location on the night of the crime. *Id.*

Petitioner relies on the Supreme Court's ruling in *Carpenter v. United States*, 585 U.S. 296 (2018), wherein the Court held "that the government's acquisition of a person's historical cell-site location information constitutes a search under the Fourth Amendment and therefore requires a warrant." *United States v. Mapson*, 96 F.4th 1323, 1334 (citing *Carpenter*, 585 U.S. at 316–17). Importantly, the Eleventh Circuit noted in *Mapson* that "[t]he Supreme Court has held that '[e]vidence obtained during a search conducted in reasonable reliance on binding precedent is not

subject to the exclusionary rule.'" *Id.* at 1334–35 (quoting *Davis v. United States*, 564 U.S. 229, 241 (2011)). *Carpenter* was decided on June 22, 2018. *Id.* at 1335.

Here, law enforcement relied in good faith on Fla. Stat. § 934.23 (2013). It was reasonable for the officers to rely on this Florida statute in obtaining the cell site data without a warrant. *See United States v. Joyner*, 899 F.3d 1199, 1204–05 (11th Cir. 2018) (per curiam) (applying the good-faith exception to the exclusionary rule where the government obtained cell-site records without a warrant before *Carpenter*); *United States v. Green*, 981 F.3d 945, 956–57 (11th Cir. 2020) (same).

The state courts' rejection of this claim is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Thus, the Court finds Claim One of the Petition to be without merit.

Under **Claim Two**, Petitioner alleges that his trial counsel provided ineffective assistance in failing to move to exclude witnesses who only heard about the crime after the fact. Pet. at 7. Specifically, Petitioner takes issue with counsel's failure to object to the testimony provided by Charles Bateau and Odney Cadet as they did not witness the shooting. *Id.*

Petitioner's claim is refuted by the record. The State moved to admit evidence of prior bad acts and filed notice of the State's intent to call Charles and Cadet to testify to this evidence. (ECF No. 19-3) at 86–94. Defense counsel then filed a response in opposition to the State's motion arguing that any testimony about incidents which took place before the shooting would confuse the jury and result in unfair prejudice to Petitioner. (ECF No. 19-4) at 17–21. The trial court ultimately ruled in favor of the State at a hearing on the motion. *Id.* at 22–26. Because defense counsel did in fact object to these witnesses, Petitioner cannot establish deficient performance under *Strickland.*

The state courts' rejection of this claim is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here.[2] *See Williams*, 529 U.S. at 413. Thus, the Court finds Claim Two of the Petition to be without merit.

Under **Claim Three**, Petitioner alleges that his trial counsel provided ineffective assistance in failing to move to suppress surveillance video footage. Pet. at 8. Petitioner asserts that the video evidence was not authenticated because the police did not question the two security guards working the front gate on the night of the shooting. *Id.*

Petitioner's argument under Claim Three is based purely on state evidentiary law and, as such, is not cognizable in a § 2254 proceeding. *See Branan v. Booth*, 861 F.2d 1507, 1508 (11th Cir. 1988) (affirming the dismissal of a state law claim as not cognizable in a federal habeas action and stating that "a habeas petition grounded on issues of state law provides no basis for habeas relief."). Errors of state evidentiary law are not a basis for federal habeas relief unless they result in constitutional error. *See Taylor v. Sec'y, Fla. Dep't of Corr.*, 760 F.3d 1284, 1295 (11th Cir. 2014). "[F]ederal courts will not generally review state trial courts' evidentiary determinations." *Id.* (citation omitted). Habeas relief is warranted only when the error "so infused the trial with unfairness as to deny due process of law." *Id.* (quoting *Estelle v. McGuire*, 502 U.S. 62, 75 (1991)).

Even assuming the claim is cognizable, it fails. In Florida, "[e]vidence may be authenticated based on circumstantial evidence, extrinsic evidence, or by showing that it meets the requirements of self-authentication." *Willingham v. State*, 315 So. 3d 708, 711 (Fla. 4th DCA 2021); *see also United States v. Broomfield*, 591 F. App'x 847, 851 (11th Cir. 2014) ("finding that authentication "requires only that the proponent of the evidence make out a prima facie case that

[2] The state trial court also correctly noted that "there is no requirement that a witness see and testify as to the actual incident." (ECF No. 19-3) at 4.

the proffered evidence is what it purports to be."); *United States v. Patrick*, 513 F. App'x 882, 888 (11th Cir. 2013) ("A video recording of only a portion of the events is not inherently less admissible than the testimony of a live witness who saw only part of a crime.").

At the trial, officers testified to the following. They took the DVR machine from the guard's office and watched the recordings made on the night of November 29, 2013. (T. at 582). An officer downloaded the machine's jump drive onto a CD and affixed his initials to the CD. *Id.* at 673–64. The State showed the jury the video footage on this CD at trial. *Id.* The CD consisted of a recording of the cars entering the apartment complex on the night of November 29, 2013. *Id.* Petitioner's car had a distinct grill which was visible in the video. *Id.* at 587–88. The color of this car was consistent with the car that belonged to Petitioner. *Id.*

Because the State sufficiently authenticated the surveillance video, defense counsel's performance was not deficient. *See Johnson v. Fla. Dep't of Corr.*, No. 3:19-CV-145-BJD-MCR, 2021 WL 2457658, at *8 (M.D. Fla. June 16, 2021) ("[A]uthentication for the purpose of admission is a relatively low threshold" requiring only a prima facie showing") (quoting *Walker v. Harley-Anderson*, 301 So. 3d 299, 303 (Fla. 4th DCA 2020)). Furthermore, Petitioner cannot establish prejudice for defense counsel's failure to raise a meritless authentication argument. *See Denson v. United States*, 804 F.3d 1339, 1342 (11th Cir. 2015) (noting that defense counsel cannot be deficient for failing to raise a meritless claim).

The state courts' rejection of this claim is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Petitioner is not entitled to relief under Claim Three.

Under **Claim Four**, Petitioner alleges that the State improperly charged Petitioner with murder under Count 1 of unclear amended indictment. Pet. at 10. Under **Claim Five**, Petitioner

alleges that the State improperly charged Petitioner with attempted premeditated murder under Counts 2 and 3 of unclear amended indictment. Pet. at 12.

A defective information claim is cognizable on federal habeas review only when the charging document is so deficient that it deprives the convicting court of jurisdiction. *DeBenedictis v. Wainwright*, 674 F.2d 841, 842 (11th Cir. 1982); *Hunt v. Tucker,* 875 F. Supp. 1487, 1522 (N.D. Ala. 1995); *Brooks v. Sec'y, Fla. Dep't of Corrs.*, No. 3:19-cv-787-MMH-MCR, 2022 WL 1267606, at *8 (M.D. Fla. April 28, 2022). A legally sufficient charging document "(1) presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enables the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense." *United States v. Jordan*, 582 F.3d 1239, 1245 (11th Cir. 2009) (citation and quotations omitted).

Here, the indictment met the minimum requirements for invoking the state trial court's jurisdiction. (ECF No. 19-1) at 62–63. Specifically, the charging document included Petitioner's name, identified the victims, described the times and locations of the offenses, and was signed under oath by the prosecutor. *Id.* It stated the statutory basis for each count and set forth the elements of crime. *Id.* The trial court also had subject matter jurisdiction because the indictment charged Petitioner with first-degree murder with a deadly weapon in violation of Fla. Stat. §§ 782.04(1) and 775.087 and with attempted premeditated murder with a deadly weapon or aggravated battery in violation of Fla. Stat. §§ 782.04(1)(a)1., 777.04(1), and 775.087. (ECF No. 19-1) at 62–63. As a result, Petitioner fails to establish that the charging document was so defective that it deprived the trial court of jurisdiction. *See DeBenedictis*, 674 F.2d at 842; *Tucker*, 875 F. Supp. at 1522; *Brooks*, 2022 WL 1267606, at *8.

In light of the foregoing, the state courts' rejection of these claims is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Petitioner is not entitled to relief under Claims Four and Five.

Under **Claim Six**, Petitioner alleges that his trial counsel provided ineffective assistance in failing to move to exclude several irrelevant pieces of the State's evidence. Pet. at 12. Specifically, Petitioner takes issue with his counsel's failure to move to exclude the .357 Magnum firearm recovered from Jocelyn's home and a pawn shop receipt showing that Petitioner purchased two firearms, including a 9mm. *Id.*

As a preliminary matter, Petitioner's argument under Claim Six is based purely on state evidentiary law and, as such, is not cognizable in a § 2254 proceeding. *See Branan*, 861 F.2d at 1508. Habeas relief is warranted only when the error "so infused the trial with unfairness as to deny due process of law." *Taylor*, 760 F.3d at 1295 (quoting *Estelle*, 502 U.S. at 75).

In Florida, "[r]elevant evidence is evidence tending to prove or disprove a material fact." Fla. Stat. § 90.401. In addition, "[a]ll relevant evidence is admissible, except as provided by law." Fla. Stat. § 90.402.

Here, the State introduced evidence from a firearms expert that two firearms were used to commit the murder and attempted murder, namely, a 9mm and a firearm capable of firing the .38 caliber projectile found in the deceased victim's body. (T. at 723–31). Officers found a .357 Magnum firearm by executing a warrant to search Jocelyn's home, after learning that Petitioner had spent time there on the day of the crime. *Id.* at 568–74; 955–56. A. 357 Magnum can fire .38 caliber bullets. *Id.* at 723–31. After properly authenticating as business records, the State introduced pawnshop receipts documenting Petitioner's purchase of two separate 9mm firearms before the crime took place. *Id.* at 576–78, 721–22; (ECF No. 19-4) at 165–69.

In light of the foregoing, the State sufficiently established that the firearm evidence about which Petitioner complains was relevant to the charged offenses. As a result, defense counsel was not ineffective in failing lodge a meritless objection to this evidence. *See Chandler*, 240 F.3d at 917 (holding that counsel is not ineffective for failing to raise non-meritorious issues); *Dell*, 710 F.3d at 1282 (11th Cir. 2013) (holding that counsel is not required to present every non-frivolous argument).

The state courts' rejection of this claim is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Petitioner is not entitled to relief under Claim Six.

V. CERTIFICATE OF APPEALABILITY

As amended effective December 1, 2009, § 2254 Rule 11(a) provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant," and if a certificate is issued "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." A timely notice of appeal must still be filed, even if the court issues a certificate of appealability. *See* Rules Governing § 2254 Proceedings, Rule 11(b), 28 U.S.C. § 2254.

After review of the record, the Court finds that Petitioner is not entitled to a certificate of appealability. "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *see also Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). Because the claims raised are clearly without merit, Petitioner cannot satisfy the *Slack* test

and the Court, therefore, finds that a certificate of appealability shall not issue as to the claims asserted in the Petition.

VI. CONCLUSION

Petitioner has failed to set forth an entitlement to *habeas* relief.[3] Accordingly, UPON CONSIDERATION of the Petition, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (ECF No. 1) is DENIED. No certificate of appealability shall issue. The Clerk of Court is INSTRUCTED to CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of July, 2024.

K. M. Moore

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: **Athanael J. Louis**
G60041
Charlotte Correctional Institution
Inmate Mail/Parcels
33123 Oil Well Road
Punta Gorda, FL 33955
PRO SE

Sandra Lipman
Office of the Attorney General
444 Brickell Avenue, Suite 650
Miami, FL 33131
305-377-5441
Email: sandra.lipman@myfloridalegal.com

[3] 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 required.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12418

ATHANAEL J. LOUIS,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
Secretary Florida Department of Corrections,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-23776-KMM

Before LAGOA and KIDD, Circuit Judges.

BY THE COURT:

Athanael Louis has filed motions for leave to file an out-of-time motion for reconsideration, and for reconsideration, of this Court's March 28, 2025, order denying him a certificate of appealability, on appeal from the district court's denial of his 28 U.S.C. § 2254 petition. Louis's motion for leave to file out-of-time is GRANTED. However, after careful review, Louis's motion for reconsideration is DENIED, as he has offered no new evidence or arguments of merit to warrant relief.