

No. _____

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**IN THE
SUPREME COURT OF THE UNITED STATES**

TERONE WOODS- PETITIONER

vs.

**SECY' FL. DEPT. OF CORRECTIONS - RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT (Seeking Review of the
Denial of a Certificate of Appealability)**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

**Terone Woods # I42475
Pro Se/Petitioner
Everglades Correctional Inst.
1599 SW 187th Avenue
Miami, Florida, 33194 - 2801
305-228-2000**

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11007

TERONE WOODS,

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. 0:23-cv-62415-KMW

ORDER:

Terone Woods, a Florida prisoner serving a 25-year sentence for drug trafficking offenses, moves for a certificate of appealability ("COA"), in order to appeal the district court's denial of his 28 U.S.C. § 2254 petition. He also moves for leave to proceed in forma pauperis ("IFP").

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

APPENDIX A

When the district court denied a claim on the merits, the movant 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) (quotations omitted).

Here, reasonable jurists would not debate the district court’s denial of Woods’s § 2254 petition. *See id.* First, counsel was not ineffective for failing to impeach Detective Neil Munson when his trial testimony was inconsistent with his suppression hearing testimony or deposition, because Woods admitted in his post-arrest statement that he purchased the pills and intended to sell them, and, therefore, there is not a reasonable probability that impeaching Detective Munson would have resulted in a different verdict. *See Strickland v. Washington*, 466 U.S. 668, 694(1984).

Second, Woods cannot establish that the state violated *Giglio v. United States*, 405 U.S. 150 (1972), when it permitted Detective Munson to testify inconsistently with his suppression hearing testimony, because, as discussed above, there does not appear to be a reasonable probability that the inconsistent statements affected the verdict, given Woods’s post-arrest admission. *See Ford v. Hall*, 546 F.3d 1326, 1332 (11th Cir. 2008).

Third, counsel was not ineffective for failing to object to the state’s reference to hearsay from a confidential informant during its opening statements, because those remarks did not rise to the level of prosecutorial misconduct, and, therefore, Woods was not

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Order of the Court

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prejudiced by them. *See Land v. Allen*, 573 F.3d 1211, 1220-21 (11th Cir. 2009).

Fourth, counsel was not ineffective for failing to argue that *Terry v. Ohio*, 392 U.S. 1 (1968), precluded Detective Munson from stopping and searching Woods's vehicle, because that argument would have been meritless. *See Bolender v. Singletary*, 16 F.3d 1547, 1573 (11th Cir. 1994). Under *Terry*, Detective Munson had reasonable suspicion to stop Woods, because a known informant told him about an ongoing drug sale, and he was able to corroborate that information by observing Woods's behavior. *See Florida v. J.L.*, 529 U.S. 266, 270-74 (2000). Furthermore, the pharmacy bag was in plain view inside the car, and that, combined with the tip and Detective Munson's observations, was sufficient to create probable cause to search the vehicle for contraband. *See United States v. Tally*, 108 F.3d 277, 281-82 (11th Cir. 1997).

Fifth, trial counsel was not ineffective for failing to investigate and call William Gribbs as a witness, because Woods's post-arrest admission makes it unlikely that calling Gribbs would have led to a different verdict. *See Strickland*, 466 U.S. at 694. Finally, because none of Woods's other claims have merit, his cumulative error claim is also meritless. *Morris v. Sec'y, Dep't of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012).

For these reasons, Woods's motion for a COA is DENIED. His motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Nancy G. Abudu

UNITED STATES CIRCUIT JUDGE

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11007

TERONE WOODS,

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. 0:23-cv-62415-KMW

Before LAGOA and ABUDU, Circuit Judges.

BY THE COURT:

Terone Woods, a Florida prisoner, moves for reconsideration of this Court's November 20, 2025, order denying his motions for a certificate of appealability ("COA") and for leave to proceed in forma pauperis ("IFP").

APPENDIX B

After careful review, Woods's motion for reconsideration is GRANTED, in part, and DENIED, in part. It is GRANTED to the extent that this Court will consider his argument that counsel was ineffective for failing to impeach Detective Munson as to whether he recorded his entire post-arrest interaction with Woods. It is otherwise DENIED, as Woods has offered no new evidence or arguments of merit to warrant relief as to any other issues.

Upon reconsideration, reasonable jurists would not debate whether Woods received ineffective assistance of counsel. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, Woods's COA motion is DENIED, and his IFP motion is DENIED AS MOOT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 23-62415-CV-WILLIAMS

TERONE WOODS,

Petitioner,

v.

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

Respondent.

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

THIS MATTER is before the Court on the *pro se* Petition for Writ of Habeas Corpus (DE 1) ("**Petition**") brought pursuant to 28 U.S.C. § 2254 by Petitioner Terone Woods ("**Petitioner**") challenging his convictions and sentences for trafficking in Oxycodone and possession of Alprazolam entered following a jury verdict in Broward County, Seventeenth Judicial Circuit Court, Case No. 10-16606CF10A. Upon review of the Petition (DE 1), the Response (DE 10) ("**Response**") from Ricky D. Dixon, Secretary, Florida Department of Corrections (the "**State**" or "**Respondent**") including his multiple appendices containing relevant state court records (DE 12-1; DE12-2) and transcripts (DE 11-1; DE 11-2; DE 11-3), and Petitioner's Reply (DE 16) ("**Reply**"),¹ for the reasons discussed below, the Petition is **DENIED**.

¹ The Court takes judicial notice of its own records and the on-line records of the state courts. See Fed. R. Evid. 201; *Nguyen v. United States*, 556 F.3d 1244, 1259 n.7 (11th Cir. 2009) (quoting *United States v. Glover*, 179 F.3d 1300, 1302 n.5 (11th Cir. 1999) ("A court may take judicial notice of its own records and the records of inferior courts.") (citation omitted)).

I. BACKGROUND

A. State Court Proceedings.

On October 10, 2010, an Information was filed charging Petitioner with trafficking in Oxycodone (Count I) and possession of Alprazolam (Count II). (DE 12-1, Ex. 2 at 5–6.)² Prior to trial, Petitioner filed a motion to suppress evidence seized from Petitioner's vehicle and all statements made to law enforcement. (*Id.*, Ex. 3 at 8–9.) On October 22, 2014, the trial court entered an Order denying Petitioner's motion to suppress "[f]or reasons as stated on the record in open court." (*Id.*, Ex. 4 at 11.) Petitioner proceeded to trial and was found guilty as charged by a jury. (*Id.*, Ex. 5 at 13–15.) On May 15, 2019, after being adjudicated guilty, Petitioner was sentenced to a term of twenty-five (25) years in prison as to Count I and a concurrent five (5) years in prison as to Count II. (*Id.*, Ex. 6 at 17–18; Ex. 7 at 20–25.)

Petitioner appealed, and filed a counseled initial brief, raising four claims of trial court error. (*Id.*, Ex. 9 at 33–75.) On June 25, 2020, the appellate court, *per curiam* affirmed the convictions and sentences. *Woods v. State*, No. 4D19-1651, 298 So. 3d 1150, at *1 (Fla. 4th DCA Jun. 25, 2020) (unpublished table decision). (DE 12-1, Ex. 12 at 115.) Petitioner was not permitted to seek discretionary review with the Florida Supreme Court because the direct appeal order did not cite to any decision for which the Florida Supreme Court had accepted review. *See Wells v. State*, 132 So. 3d 1110, 1113

² Unless otherwise noted, the Court relies on the pagination generated by the Case Management/Electronic Case Files ("CM/ECF") system, which appears in the header on all filings. Citations to the specific docket entry in this case are designated "(DE ____)." Citations to state court transcripts are also designated by the letter "T." followed by the actual page number and the page number imprinted by the Court's electronic on-line docketing system.

(Fla. 2014). Thus, under the Antiterrorism and Effective Death Penalty Act of 1996 ("*AEDPA*"), as amended, the judgment became final at the latest on October 28, 2020, ninety (90) days after entry of the state appellate court's order affirming the judgment of conviction, when the period for seeking discretionary review with the United States Supreme Court expired. See U.S. Sup. Ct. R. 13; *Gonzalez v. Thaler*, 565 U.S. 134, 154 (2012); *Moore v. Sec'y, Fla. Dep't of Corr.*, 762 F. App'x 610, 617 (11th Cir. 2019) (citing *Gonzalez*, 565 U.S. at 150).

On June 24, 2021, Petitioner filed a motion for postconviction relief pursuant to Fla. R. Crim. P. 3.850 ("*Rule 3.850 Motion*"), raising eight claims of ineffective assistance of counsel. (DE 12-2, Ex. 30 at 4–50.) On November 29, 2021, Petitioner filed an Amended Rule 3.850, amending only ground one of his Rule 3.850 Motion. (DE 12-1, Ex. 16 at 126–71.) On November 28, 2022, the trial court entered an Order denying the Amended Rule 3.850 Motion based on the "[i]legal and factual reasoning . . . contained in the State's Response. . . ." (*Id.*, Ex. 18 at 185–87.) On December 13, 2022, Petitioner filed a motion for rehearing. (*Id.*, Ex. 19 at 189–202.) On January 19, 2023, the trial court entered an Order denying Petitioner's motion for rehearing. (*Id.*, Ex. 20 at 212.) On September 17, 2023, the appellate court *per curiam* affirmed the trial court's Order denying Petitioner's Amended Rule 3.850 Motion. *Woods v. State*, No. 4D23-528, 2023 WL 5767804, at *1 (Fla. 4th DCA Sept. 17, 2023) (unpublished table decision). (DE 121, Ex. 25 at 280.) On November 9, 2023, the appellate court concluded the appeal by issuing its Mandate. (*Id.*, Ex. 28 at 300.)

B. This 28 U.S.C. § 2254 Federal Proceeding.

On December 21, 2023, Petitioner filed this § 2254 Petition, after he signed and handed it to prison officials for mailing pursuant to the mailbox rule.³ (DE 1 at 20.) In the Petition, Petitioner raises the following eight claims:

1. The State committed a *Giglio*⁴ violation by permitting and/or failing to correct the false testimony of a key prosecution witness. (DE 1 at 4.)
2. Trial counsel was ineffective for failing to object to the prosecutor's improper opening statements. (DE 1 at 8.)
3. Trial counsel was ineffective for failing to impeach Detective Munson with his inconsistent trial testimony regarding seeing Petitioner exchange money during a hand-to-hand transaction. (DE 1 at 9.)
4. Trial counsel was ineffective for failing to impeach Detective Munson with regarding his testimony that, during a traffic stop of Petitioner's vehicle, he observed a McDonald's bag which contained a bunch of loose pills. (DE 1 at 10.)
5. Trial counsel was ineffective for failing to investigate and call William Gibbs,⁵ known to Petitioner as "Jersey," to testify as a key defense witness at trial. (DE 1 at 12.)
6. Trial counsel was ineffective for failing to impeach Detective Munson during trial with "[h]is deposition statement." (DE 1 at 14.)
7. Trial counsel was ineffective in failing to properly litigate the Fourth Amendment issue during Petitioner's motion to suppress hearing. (DE 1 at 15.)

³Absent evidence to the contrary, in accordance with the prison mailbox rule, a *pro se* prisoner's filing is deemed filed on the date it is executed and handed to prison authorities for mailing. *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001); Fed. R. App. 4(c)(1).

⁴ See *Giglio v. United States*, 405 U.S. 150, 153 (1972) (finding a defendant is denied due process when a state knowingly uses perjured testimony at trial or allows untrue testimony to go uncorrected); see also *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

⁵ Petitioner spells the witness's last name as "Gibbs," but the trial record reveals it is "Gribbs," therefore the Court has utilized Gribbs in this Order.

8. The cumulative effects of counsel's deficiencies affected the outcome of Petitioner's trial. (DE 1 at 17.)

C. Preliminary Defenses.

1. Statute of Limitations Defense.

Respondent concedes the Amended Petition was timely filed. (DE 10 at 3.) Because Respondent has explicitly waived the statute of limitations defense, this Court need not determine whether the waiver is accurate.⁶ See 28 U.S.C. §2244(d)(1)–(2); *Wood v. Milyard*, 566 U.S. 463, 473 (2012)⁷ (citing *Day v. McDonough*, 547 U.S. 198, 210–11 (2006)).

2. Lack of Exhaustion Defense.

Respondent has also waived the exhaustion defense, conceding that the claims raised in this § 2254 Petition were exhausted in the state forum. (*Id.* at 5–7.) It is axiomatic that issues raised in a federal habeas corpus petition must have been fairly presented to the state courts and thereby exhausted prior to their consideration on the merits. See 28 U.S.C. § 2254(b)(1); *Preston v. Sec'y, Fla. Dep't of Corr.*, 785 F.3d 449, 457 (11th Cir. 2015) (quoting *Lucas v. Sec'y, Dep't of Corr.*, 682 F.3d 1342, 1351 (11th Cir. 2012)). Both the factual substance of a claim and the federal constitutional issue itself must have been expressly presented to the state courts to achieve exhaustion for

⁶ The Respondent's timeliness argument appears meritorious since less than one year was untolled from the time Petitioner's conviction became final and the filing of this federal petition.

⁷ In *Wood*, the United States Supreme Court held that "[d]istrict courts, have the authority . . . to raise a forfeited timeliness on their own initiative," but abuses its discretion in considering a statute of limitation defense that has been affirmatively waived. *Wood*, 566 U.S. at 473; *Green v. United States*, 735 F. App'x 687, 688 (11th Cir. 2018) (citations omitted).

purposes of federal habeas corpus review. See *Preston*, 785 F.3d at 457; *Baldwin v. Reese*, 541 U.S. 27, 33-34 (2004). Respondent's explicit waiver of exhaustion appears correct, as the claims raised here were properly exhausted by Petitioner in the Rule 3.850 proceedings. Thus, the claims are ripe for federal habeas corpus review.

II. APPLICABLE LEGAL PRINCIPLES

A. Standard of Review.

Because Petitioner's case was filed after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 ("*AEDPA*"), the AEDPA governs the Court's scope of review. See *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 246 (2007); *Ledford v. Warden, Ga. Diagnostic & Classification Prison*, 818 F.3d 600, 642 (11th Cir. 2016). The AEDPA ensures that federal habeas corpus relief works to "guard against extreme malfunctions in the state criminal justice systems," and not as a means of error correction." See *Greene v. Fisher*, 565 U.S. 34, 38 (2011) (quoting *Harrington v. Richter*, 562 U.S. 86, 102-103 (2011)); *Ledford*, 818 F.3d at 642. The "AEDPA's statutory scheme is designed to strongly discourage" petitioners from presenting new evidence and ensures that "[f]ederal courts sitting in habeas are not an alternative forum for trying facts and issues which a prisoner made insufficient effort to pursue in state proceedings." *Cullen v. Pinholster*, 563 U.S. 170, 185 (2011) (citations and quotations omitted).

The AEDPA standard is both mandatory and difficult to meet. *Id.* at 181. The AEDPA imposes a "highly deferential standard for evaluating state-court rulings and demands that state court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotation marks and citation omitted); *Lee v. Comm'r, Ala. Dep't of Corr.*, 726 F.3d 1172, 1192 (11th Cir. 2013) (citations omitted). The Eleventh Circuit

"has stressed that in applying AEDPA deference federal courts are not to take a magnifying glass to the state court opinion or grade the quality of it." See *Meders v. Warden, Ga. Diagnostic Prison*, 911 F.3d 1335, 1350 (11th Cir. 2019). Thus, deferential review under Section 2254(d) is generally limited to the record that was before the state court that adjudicated the claim on the merits. See *Cullen*, 563 U.S. at 182; *Gill v. Mecusker*, 633 F.3d 1272, 1288-91 (11th Cir. 2011).

Under the AEDPA, a federal court may not grant a habeas petition relief on any claim adjudicated on the merits in state court⁸ unless the state court's decision (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." See 28 U.S.C. § 2254(d)(1); *Harrington*, 562 U.S. at 97-98; *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000); *Rimmer v. Sec'y, Fla. Dep't of Corr.*, 876 F.3d 1039, 1053 (11th Cir. 2017). Under Section 2254(d)(1)'s "unreasonable application" clause, a district court may grant the writ if the state court "identifie[d] the correct governing legal principle from [the Supreme Court's] decision but unreasonably applie[d] that principle to the facts of the case." *Williams*, 529 U.S. at 413. Thus, district courts

⁸ Also, if the last state court to decide a prisoner's federal claim provides an explanation for its decision in a reasoned opinion, "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). Where the decision of the last state court to decide a prisoner's federal claim contains no reasoning, federal courts must "look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale." *Id.* "It should then be presumed that the unexplained decision adopted the same reasoning." *Id.*

must first identify the last state court decision, if any, that adjudicated the merits of the claim. See *Marshall v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1277, 1285 (11th Cir. 2016).

Further, for purposes of federal habeas review, "clearly established federal law" consists of the "holdings, as opposed to the dicta, of [the Supreme Court's] decisions at the time of the relevant state court decision. *Williams*, 529 U.S. at 412; *Lee*, 726 F.3d at 1192 (citation omitted). "A Supreme Court decision, which is not dictated by precedent or is not made retroactive to cases on collateral review, handed down after the petitioner's conviction becomes final does not control the disposition of the petitioner's habeas proceeding." *Gary v. Hall*, 558 F.3d 1229, 1254 (11th Cir. 2009) (citing *Newland v. Hall*, 527 F.3d 1162, 1196–1201 (11th Cir. 2008)).

Petitioner bears the burden of establishing his right to federal habeas corpus relief and proving all the facts necessary to demonstrate a constitutional violation. See *Garlotte v. Fordice*, 515 U.S. 39, 46 (1995); see also *Cullen*, 563 U.S. at 187. Thus, to warrant relief, Petitioner must show that the state court ruling was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Lee*, 726 F.3d at 1192 (quoting *Harrington*, 560 U.S. at 101-102). An unreasonable application of federal law differs from an incorrect application of federal law. *Renico*, 559 U.S. at 773 (citation omitted). Courts "apply this same standard when evaluating the reasonableness of a state court's decision under § 2254(d)(2)." *Landers v. Warden, Att'y Gen. of Ala.*, 776 F.3d 1288, 1294 (11th Cir. 2015) (citations omitted). That is, "[a] state court's . . . determination of the facts is unreasonable only if no fairminded jurist could agree with the state court's determination

or conclusion." *Holsey v. Warden, Ga. Diagnostic Prison*, 694 F.3d 1230, 1257 (11th Cir. 2012) (citations and internal quotation marks omitted).

Moreover, federal courts are authorized to deny federal relief when the claim is subject to rejection under *de novo* review, regardless of whether the AEDPA deference applies. See *Berghuis v. Thompkins*, 560 U.S. 370, 390 (2010) (holding that federal courts can "deny writs of habeas corpus under § 2254 by engaging in *de novo* review when it is unclear whether AEDPA deference applies" because a habeas petition will not be entitled to habeas relief if his claim is rejected on *de novo* review); *Connor v. GDCP, Warden*, 784 F.3d 752, 767 (11th Cir. 2015) (citations omitted) ("[B]ecause we conclude that Mr. Connor would not be entitled to habeas relief under *de novo* review, we affirm the District Court's denial of relief under that standard without resolving whether AEDPA deference applies.").

B. Ineffective Assistance of Counsel Principles.

Petitioner raises multiple claims of ineffective assistance of counsel which are governed by the Supreme Court's two-pronged test announced in *Strickland v. Washington*, 466 U.S. 668 (1984). The two-prong test requires Petitioner to demonstrate that: (1) counsel's performance was deficient, and (2) a reasonable probability that the deficiency resulted in prejudice. See *id.* at 694. Deficient performance requires Petitioner to demonstrate that counsel's actions were unreasonable or fell below prevailing professional competence demanded of defense attorneys. *Id.* at 688. The *Strickland* deficiency prong does not require a showing of what the best lawyers would have done, but rather whether some reasonable lawyer could have acted in the circumstances as defense counsel acted. *Dingle v. Sec'y, Dep't of Corr.*, 480 F.3d 1092, 1099 (11th Cir.

2007). Even with the benefit of hindsight, where counsel's decision appears unwise, it will only be ineffective if it was so unreasonable that no attorney would have chosen it.

Dingle, 480 F.3d at 1099. *Strickland's* prejudice prong requires Petitioner to establish that, but for counsel's deficiency, there is a reasonable probability that the result of the

proceeding would have been different. *Strickland*, 466 U.S. at 694. If 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). Also, bare and conclusory

allegations of ineffective assistance are insufficient to satisfy the *Strickland* test. See

Blackledge v. Allison, 431 U.S. 63, 74 (1977); *Boyd v. Comm'r, Ala. Dep't of Corr.*, 697

F.3d 1320, 1333–34 (11th Cir. 2012).

III. DISCUSSION

A. State Giglio Violation.

In claim 1, Petitioner asserts that the State committed a *Giglio* violation by permitting and/or failing to correct the false testimony of a key prosecution witness during trial. (DE 1 at 4.) At the hearing on Petitioner's motion to suppress, Petitioner claims that Detective Munson conceded he was not an eyewitness to all the events in question and relied upon information provided by the confidential informant ("CI"). (*Id.*) Petitioner maintains Detective Munson testified that he observed Petitioner and William Gibbs ("Mr. Gibbs") (known to Petitioner as "Jersey") exchange something, but he could not identify what was exchanged between the parties.⁹ (*Id.*) At trial, however, Petitioner asserts

⁹ Review of Detective Munson's testimony at the suppression hearing reveals that he observed Mr. Gibbs, not the CI, walk up to the passenger side of Petitioner's vehicle and exchange something with Petitioner, but "could not tell what it was." (DE 11-1 at 25–27 [T. 25–27].) Afterwards, Detective Munson testified that the CI and a female filled their drug prescriptions, and thereafter, the female went into a McDonalds where she exited

Detective Munson saw "green paper" or what appeared to be a hand-to-hand "money" transaction between Petitioner and Mr. Gibbs. (*Id.*) Thus, Petitioner maintains Detective Munson gave "false testimony" at trial that directly contradicted his testimony during the suppression hearing. (*Id.* at 5–6.) Respondent argues, in relevant part, that Petitioner is not entitled to relief on this claim.¹⁰ (DE 10 at 14.) Petitioner disagrees. (DE 16 at 2.)

When raised as ground nine of the Amended Rule 3.850 Motion, the trial court denied relief finding that Petitioner's *Giglio* claim was "conclusory and speculative" because there was "no evidence to establish that a witness provided any testimony that was false, nor that the Defendant was prejudiced because the evidence was material." (DE 12-1, Ex. 18 at 187.) The appellate court subsequently affirmed the trial court's denial of the claim. *Woods*, 2023 WL 5767804 at *1; (DE 12-1, Ex. 25 at 280.) For the reasons discussed below, the trial court's rejection of the claim is in accordance with federal constitutional principles and, therefore, entitled to § 2254 deference.

carrying a McDonalds bag, later used to hold the white pharmacy bag that contained the drugs. (DE 11-1 at 17 [T. 17].) After Mr. Gibbs handed Petitioner the McDonalds bag and exited Petitioner's vehicle, Detective Munson testified he received a call from the CI confirming that he and the female had received \$400 for their services in obtaining the prescription drugs. (*Id.* at 20 [T. 20].) When the vehicular stop was executed, Detective Munson testified he observed the McDonalds bag inside the vehicle, explaining that it was open, and he could observe that the pharmacy bag inside the McDonalds bag. (*Id.* at 20 [T. 20].)

¹⁰ Respondent also argues the claim is procedurally barred because the claim is not cognizable in a Rule 3.850 motion. (DE 10 at 13.) Respondent argument is rejected as the claim was properly raised in the state court and, therefore, is ripe for federal habeas corpus review. Under Florida law, a *Giglio* violation "[i]s typically raised in a postconviction motion because these violations are usually discovered after the trial is over." *Robinson v. State*, 65 So. 3d 75, 76 (Fla. 2nd DCA 2011) (finding the trial court erred in determining that the *Giglio* claim was not cognizable in a postconviction motion) (first citing *Rodriguez v. State*, 39 So. 3d 275 (Fla. 2010) and then citing *Davis v. State*, 31 So. 3d 277 (Fla. 2nd DCA 2010).

At trial, Detective Munson was vigorously cross-examined by the defense regarding his investigation and recollection of the incident.¹¹ (DE 11-2 at 68–79, 85–86 [T. 68–79, 85–86].) Specifically, Detective Munson testified that he observed a “quick exchange” between Petitioner and Mr. Gibbs. (*Id.* at 75 [T. 75].) During the investigation, Detective Munson explained that he had a view of the vehicle in which Petitioner was a

¹¹ During direct, Detective Munson testified that, on September 14, 2010, he received information from one of his trustworthy CI's so he conducted undercover surveillance in the parking lot of a strip mall where a small pharmacy was located. (DE 11-1 at 14 [T. 14].) At the time, Petitioner was a passenger in one of two vehicles that arrived at the scene. (*Id.* at 16 [T. 16].) The occupant of one of the vehicles, later identified as Mr. Gibbs, went up to Petitioner's vehicle where Detective Munson observed money—green paper—being handed from one to the other. (*Id.* at 17 [T. 17].) Thereafter, Mr. Gibbs met with the CI and female in the other vehicle, handing them the money. (*Id.* at 17 [T. 17].) The CI and female then went into the pharmacy, filling two drug prescriptions, and exited about twenty minutes later, each carrying a white pharmacy bag. (*Id.* at 19 [T. 19].) The female left in her vehicle, and the CI drove away in his, both pulling into the parking lot of a McDonalds on Broward Boulevard. (*Id.* at 20 [T. 20].) Once there, the CI left his prescription bag with the female. (*Id.* at 21 [T. 21].) The female was then observed entering a McDonalds and then exiting the McDonalds shortly thereafter with a McDonald's bag. (*Id.* at 22 [T. 22].) At that point, Detective Munson testified he did not know what was inside the McDonald's bag. (*Id.* at 22 [T. 22].) After Petitioner arrived at the scene, Mr. Gibbs exited his vehicle with the McDonald's bag, and then entered Petitioner's vehicle. (*Id.* at 23 [T. 23].) Petitioner then drove through the McDonalds drive-thru and back where they started, where Mr. Gibbs was observed leaving Petitioner's vehicle empty-handed. (*Id.* at 23 [T. 23].) Shortly after Petitioner left the McDonalds, he was stopped by law enforcement. (*Id.* at 25 [T. 25].) Detective Munson testified that, as he stood next to Petitioner's vehicle, he looked through the windshield and observed the open McDonald's bag and could see “the thin white paper prescription bag and in that was just like 500 loose pills, just a bunch of loose pills.” (*Id.* at 26 [T. 26].) At the time of the vehicular stop, Petitioner was alone in the car, and after he was removed from the vehicle, Detective Munson seized from inside the vehicle the McDonald's bag containing the drugs, and other items, including a rental agreement. (*Id.* at 27–36 [T. 27–36].) Thereafter, Petitioner's recorded statement was identified by Detective Munson, introduced into evidence, and played for the jury. (*Id.* at 38–56 [T. 38–56].) After being advised of and waiving his rights, Petitioner admitted that he gave “Jersey” money so he could buy drugs. (*Id.* at 47–49 [T. 47–49].) Petitioner also admitted that after the drugs were purchased, Jersey gave them to him, and he intended to sell the drugs up north. (*Id.* at 49–50 [T. 49–50].) Petitioner explained that he paid \$1,200 for a total of 400 pills which he sells up north for \$15 per pill. (*Id.* at 55–56 [T. 55–56].)

passenger when Mr. Gibbs walked up to the passenger window and an exchange occurred between them. (*Id.* at 75-76 [T. 75-76].) Afterwards, Detective Munson testified that the female and confidential informant ("CI")¹² were observed entering and later exiting a pharmacy. (*Id.* at 76 [T. 76].) Detective Munson also testified that he next saw Petitioner when he arrived at a McDonalds driving the same vehicle from which pills were later recovered and seized. (*Id.* at 76 [T. 76].) When Petitioner arrived at the McDonalds' drive-thru, Detective Munson testified he observed Mr. Gibbs enter Petitioner's vehicle and the occupants' purchase of a single drink at the drive-thru. (*Id.* at 77 [T. 77].) After Petitioner drove out of the drive-thru, Detective Munson testified that Mr. Gibbs exited the vehicle and Petitioner drove away, traveling at a normal rate of speed. (*Id.* at 78-79 [T. 78-79].) Shortly thereafter, Detective Munson testified intercepted Petitioner's vehicle and conducted a vehicular traffic stop. (*Id.* at 79 [T. 79].)

Detective Munson was extensively cross-examined by the defense on the inconsistencies regarding his observation of the exchange between Petitioner and Mr. Gibbs and that the jury was able to weigh his credibility. The record does not support a finding that the State knowingly suborned perjury or that the State engaged in prosecutorial misconduct. Moreover, given the evidence adduced at trial, including Petitioner's own post-arrest statement and testimony, Petitioner has not demonstrated that Detective Munson's inconsistent statement infected the trial with unfairness and, therefore, no due process violation has been established. As a result, Petitioner is not

¹² Detective Munson testified that the CI was not cooperating in exchange for leniency but was a paid informant who had always provided trustworthy and reliable information. (DE 11-2 at 86 [T. 86].)

entitled to relief and claim 1 is **DENIED**.

B. Ineffective Assistance of Counsel Claims.

1. Failure Object to Prosecutor's Improper Opening Statements.

In claim 2, Petitioner asserts that counsel was ineffective for failing to object to the prosecutor's improper opening statements. (DE 1 at 8.) Petitioner claims counsel failed to object to the prosecutor's opening statement and then move for a mistrial after the prosecutor referenced a hearsay statement of a non-testifying CI that incriminated Petitioner and violated his Confrontation Rights.¹³ (DE 1 at 8.) Specifically, Petitioner maintains that the prosecutor's comment that Detective Munson received information from a CI that someone had offered to purchase prescription pills amounted to

¹³ The Sixth Amendment's Confrontation Clause guarantees an accused in a criminal prosecution to be confronted with the witnesses against him. *Erwin v. Fla. Dep't of Corr.*, 568 F. App'x 749, 752 (11th Cir. 2014) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). Specifically, "[t]he Sixth Amendment prohibits the introduction of out-of-court testimonial statements unless the declarant is unavailable to testify, and the defendant had a prior opportunity to cross-examine the declarant. *Robertson v. Warden*, 506 F. App'x 951, 952 (11th Cir. 2013) (citing *Crawford v. Washington*, 541 U.S. 368, 68 (2004) (receding from the *Ohio v. Roberts*, 448 U.S. 56, 66 (1980) test for testimonial hearsay statements which focused on the reliability of the statements, and holding that the admission of a hearsay statement made by a declarant who does not testify at trial violates the Sixth Amendment if (1) the statement is testimonial, (2) the declarant is unavailable, and (3) the defendant lacked a prior opportunity for cross-examination of the declarant)).

It is true that the CI did not testify at trial. However, Petitioner has not demonstrated that the brief opening statement by the prosecutor was offered for the truth of the matters asserted or to prove the Petitioner's guilt. Moreover, given the nature of the statement when considered with the evidence adduced at trial, including Petitioner's own post-arrest statement, the statement did not violate Petitioner's Confrontation Rights. See e.g. *Davis v. Washington*, 547 U.S. 813, 826–28 (2006) (holding that statements are nontestimonial when made in the course of a police interrogation under circumstances that objectively indicate that the primary purpose of the interrogation is to enable police to respond to an ongoing emergency). Thus, counsel had no duty to raise this non-meritorious claim or move for a new trial based on a confrontation violation. Accordingly, this claim is **DENIED**.

impermissible hearsay from a non-testifying witness. (*Id.*) Petitioner maintains the prosecutor's opening statement was the only evidence presented during trial establishing Petitioner's involvement in a "prescription pill deal." (*Id.*)

In the federal habeas context, to warrant a new trial based on prosecutorial misconduct, Petitioner must demonstrate that the prosecutor's comments (1) were improper and (2) prejudiced his substantive rights. See *Donnelly v. DeChristoforo*, 416 U.S. 637, 642-45 (1974); *United States v. Al Jaber*, 97 F.4th 1310, 1328 (11th Cir. 2024). "Opening statements and closing arguments 'assist the jury in analyzing the evidence, and although a prosecutor may not exceed the evidence presented at trial during [his or] her closing argument, [he or] she may state conclusions drawn from the trial evidence.'" *Al Jaber*, 97 F.4th at 1328 (quoting *United States v. Reeves*, 742 F.3d 487, 505 (11th Cir. 2014)). "Yet, a prosecutor is free to suggest during oral argument what the jury should conclude from the evidence before it." *Al Jaber*, *supra*. (quoting *United States v. Rivera*, 780 F.3d 1084, 1100 (11th Cir. 2015)).

To demonstrate that a prosecutor's prejudicial comments affected a petitioner's substantial rights requires there be a reasonable probability that, but for the remarks, the outcome of the trial would have been different. See *United States v. Eckhardt*, 466 F.3d 938, 947 (11th Cir. 2006). Further, the jury's decision is to be based upon the evidence presented at trial and the legal instructions given by the court. See *Chandler v. Fla.*, 449 U.S. 560, 574 (1981) ("Trial courts must be especially vigilant to guard against any impairment of the defendant's right to a verdict based solely upon the evidence and the relevant law."); see also *Ward v. State*, 765 So. 2d 299, 300 (Fla. 5th DCA 2000) ("most of the prosecutor's comments were 'fair comment' on the defense counsel's closing

argument"); *Laboo v. State*, 715 So. 2d 1034, 1035 (Fla. 1st DCA 1998) (prosecutor's comments to be viewed in context of all the evidence presented and the initial arguments of defense counsel).

When viewing the now-challenged opening statements, in relation to the evidence adduced at trial, it is clear the prosecutor's remarks did not render Petitioner's trial fundamentally unfair. While it is true that the prosecutor advised the jury that the evidence would establish that Detective Munson learned from a trustworthy CI that someone had offered to purchase prescription pills from the CI, the prosecutor's statements outlined the evidence the State intended to prove at trial, which included Petitioner's own post-arrest statement. There is nothing to suggest that the statements were made in a deliberate attempt to distract the jury or mislead the jurors as to issues of guilt or innocence. *United States v. Hall*, 47 F.3d 1091, 1098 (11th Cir. 1995) ("Claims of prosecutorial misconduct are fact specific inquiries which must be conducted against the backdrop of the entire record.") (citations omitted). Moreover, the evidence at trial was more than sufficient to establish Petitioner's culpability such that the alleged prosecutorial misconduct did not alter the outcome of the proceedings.

Even when a prosecutor voices a personal opinion but indicates this belief is based on evidence in the record, the comment does not require a new trial. See *United States v. Granville*, 716 F.2d 819, 822 (11th Cir. 1983). Nothing in the record suggests the prosecutor presented his personal opinion as to Petitioner's guilt. But even if the comments could be interpreted that way, they were based upon evidence in the record.

The law is well established that "[a]ttempts to bolster a witness by vouching for his credibility are normally improper and constitute error." *United States v. Newton*, 44 F.3d

913, 921 (11th Cir. 1995) (citations omitted). Courts have found it improper for the "prosecution to place the prestige of the Government [State] behind a witness by making explicit personal assurances of the witness' veracity." *Id.* (citations omitted). The Eleventh Circuit has "[d]enounce[d] lawyers who give their personal opinion that 'I believe the witness is telling the truth.'" *Id.* (quoting *United States v. Young*, 470 U.S. 1 (1985)). Nevertheless, it should be noted that "[t]he prohibition against vouching does not forbid prosecutors from arguing credibility . . . it forbids arguing credibility based on the reputation of the government office or on evidence not before the jury." *United States v. Hernandez*, 921 F.2d 1569, 1573 (11th Cir. 1991).

Moreover, it could have been unavailing for trial counsel to object to the comments made during opening statement or move for a mistrial based on these remarks given the "wide latitude" Florida law affords counsel during opening statements and closing arguments. See *Breedlove v. State*, 413 So.2d 1, 8 (Fla. 1982); *Ford v. State*, 802 So. 2d 1121, 1130 (Fla. 2001) (holding that a mistrial based on prosecutorial comments is appropriate only where a statement is so prejudicial that it vitiates the entire trial). Petitioner has not demonstrated that the State's comments were so prejudicial that it vitiated the entire trial.

Further, any potential prejudice was diminished by the trial court's clear and correct instructions to the jury regarding the criminal offenses charged, the burden of proof, and the reliability of evidence. (DE 11-2 at 192-209 [T. 192-209].) The court instructed the jury that it could believe or disbelieve all or any part of the evidence presented or the testimony of any witness. (*Id.*) The court also specifically instructed the jury that argument by the lawyers is not evidence in the case. (*Id.* at 208-09 [T. 208-09].) It is generally

presumed that jurors follow the court's instructions. See, e.g., *Richardson v. Marsh*, 481 U.S. 200, 211 (1987). Thus, there is no reasonable probability that the result of the trial would have been different if counsel had objected to the now challenged comments or if the now challenged comments had not occurred.

For all of the above reasons, including the strength of the evidence of Petitioner's guilt, it is apparent that the prosecutor's statements were, at worst, no more than harmless error, if error at all. See *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946) (a petitioner is entitled to federal habeas corpus relief only if the constitutional error from his trial had substantial and injurious effect or influence in determining the jury's verdict)). Accordingly, Petitioner has not demonstrated *Strickland* deficiency or prejudice, and is not entitled to relief on this claim.

2. Failure to Impeach Detective Munson.

In claims 3, 4, and 6, Petitioner claims that counsel was ineffective for failing to impeach Detective Munson during trial regarding prior inconsistent statements. (DE 1 at 9, 10, 14.) Specifically, in claims 3 and 4, Petitioner asserts counsel had a duty to impeach Detective Munson with prior inconsistent statements regarding his observations of the hand-to-hand exchange between Petitioner and Mr. Gibbs and Detective Munson's discovery and seizure of the McDonalds bag containing the pharmacy bag and prescription pills from Petitioner's vehicle. (DE 1 at 9-13.)

When raised in the Rule 3.850 proceeding, the trial court denied the claims finding no *Strickland* deficiency because Petitioner's "admitted to buying pills to sell for a profit" and because counsel "cross-examined the witness, Detective Munson," and "attacked his

testimony in closing argument." (DE 12-1, Ex. 18 at 185-86.) Like the arguments raised in relation to claim 1 above, Petitioner has not demonstrated that that Detective Munson's inconsistent statement regarding his observation of the precise nature of the hand-to-hand transaction between Petitioner and Mr. Gibbs was so material that it affected the outcome of the verdict. To the contrary, evidence at trial established that something was given by Petitioner to Mr. Gibbs who, in turn, handed it to the CI. The CI and an unidentified female then went into a pharmacy, filling two drug prescriptions which they combined in one pharmacy prescription bag. Afterwards, the female put the prescription bag inside a McDonalds bag, which Mr. Gibbs handed to Petitioner.

Given the foregoing, Petitioner has not demonstrated that further cross-examination by defense counsel would have resulted in additional impeachment of Detective Munson. Moreover, it was within the jury's discretion to weigh the credibility of the witnesses, including that of the Petitioner. By returning its verdict of guilt, the jury found the State had proven the offenses as charged, rejecting Petitioner's testimony. As a result, Petitioner has not demonstrated *Strickland* prejudice arising from counsel's failure to impeach Detective Munson. Accordingly, the rejection of claims 3 and 4 in the state forum are entitled to § 2254 deference and, therefore, the claims are **DENIED**.

In related claim 6, Petitioner asserts that counsel was ineffective for failing to impeach Detective Munson with his deposition testimony. (DE 1 at 14.) During his deposition, Detective Munson recalled that, during Petitioner's post-arrest statement, Petitioner admitted "he got the pills," that "he had made some runs up to Ohio," and that he "was going to send the pills up to Ohio." (DE 11-3 at 10 [T. 10].) Detective Munson further testified that Petitioner "attempted to make a couple of calls . . . [and] had some

other people he was going to give up, but the calls didn't work out." (*Id.* at 10 [T. 10].) According to Petitioner, there was nothing in the recorded statement to suggest that Petitioner attempted to cooperate and make any calls for law enforcement. (DE 1 at 14.)

Careful review of the Petitioner's statement introduced at trial reveals that Petitioner did, in fact, attempt to cooperate with law enforcement, asking Detective Munson "What can I do, man? What can I do?" (DE 11-2 at 44 [T. 44].) After admitting to his involvement in the offense, Petitioner inquired about "substantial assistance," and then stated, "Jersey did me dirty. . . . Jersey got me here." (*Id.* at 53 [T. 53].) After inquiring whether he would still face ten years if he cooperated, Detective Munson responded, advising Petitioner he could not make any promises. (*Id.* at 55 [T. 55].) When asked by Detective Munson if he had any "information," Petitioner responded, "I may have a few things." (*Id.* at 55 [T. 55].) In response to whether Petitioner would think about cooperating with law enforcement in the future, Petitioner responded, "I got to do something, bro." (*Id.* at 58 [T. 58].) After the statement concluded, Detective Munson testified at trial that he never again heard from Petitioner regarding cooperating with law enforcement, so no agreement was ever finalized. (*Id.* at 65 [T. 65].)

On this record, Petitioner cannot demonstrate *Strickland* prejudice arising from counsel's failure to impeach Detective Munson as alleged. Whether or not Petitioner made these calls does not affect Petitioner's guilt. Petitioner testified in his own defense at trial, explaining that his post-arrest statements were all "lies" and that he had "only agreed to cooperate and give the recorded statement because the detective had promised to let him go in exchange for his cooperation before the detective put the recording on." (DE 112 at 127, 132, 138 [T. 127, 132, 138].) Petitioner explained that he

did not conduct a pill deal, but instead had provided Mr. Gibbs with two ounces of cocaine. (DE 112 at 127, 132, 138 [T. 127, 132, 138].) Petitioner also denied knowing there was a bag of prescription pills in his car. (*Id.* at 130 [T. 130].)

Petitioner did admit telling police immediately upon his arrest that "Jersey" set him up and admitted he had done "time" and had pending charges for "cocaine." (*Id.* at 131 [T. 131].) Petitioner also testified he lied to police because he did not want to go to jail and denied ever agreeing to do "a pill deal" because pills deals were a "slow hustle" so he never "got into it" only doing deals that involved cocaine. (*Id.* at 133 [T. 133].) In fact, Petitioner admitted that while Mr. Gibbs was in his vehicle, he "did do a cocaine deal" with Mr. Gibbs.¹⁴ (*Id.* at 137–38 [T. 137–38].)

On this record, Petitioner has not demonstrated *Strickland* prejudice arising from counsel's failure to impeach Detective Munson with his deposition testimony. The Court finds counsel's cross-examination of Detective Munson more than sufficient under Sixth Amendment standards.¹⁵ Consequently, the rejection of claim 6 in the state forum was a reasonable application of federal constitutional principles, is entitled to deference, and therefore, the claim is **DENIED**. See *Williams v. Taylor, supra*.

3. Failure to Investigate and Call Key Defense Witness at Trial.

In claim 5, Petitioner asserts that counsel was ineffective for failing to investigate and call William Gibbs, as a critical defense witness to testify at trial. (DE 1 at 12.)

¹⁴ During cross-examination, Petitioner further admitted he was a four-time convicted felon. (*Id.* at 132, 137 [T. 132, 137].)

¹⁵ Further during closing argument, defense counsel emphasized that Mr. Paniagua's testimony was incredible and his appearance and resulting testimony was the result of threats by the State. (DE 11-1 at 1614, 1630–31 [T. 1615, 1631-32].)

When raised as ground one in the Rule 3.850 Amended Motion, the trial court denied relief finding the claim meritless because Petitioner had not demonstrated Mr. Gribbs' availability to testify at trial and had failed to provide an affidavit or statement from Mr. Gribbs that he would have testified as suggested. (DE 12-1, Ex. 18 at 185.) The trial court concluded Petitioner had not demonstrated deficiency or prejudice under *Strickland*. (DE 12-1, Ex. 18 at 185.) The trial court's denial of the claim was subsequently affirmed on appeal. See *Woods v. State*, 2023 WL 5767804, at *1; (DE 12-1, Ex. 25 at 280.)

Under Florida law, for a claim of ineffective assistance of counsel to be facially sufficient, based on the failure to investigate, interview or call a witness, the allegations must include: (1) the identity of the prospective witness; (2) that the prospective witness would have been available to testify at trial; (3) the substance of the testimony; and, (4) an explanation as to how the omission of the testimony prejudiced the outcome of the trial. See *Nelson v. State*, 875 So. 2d 579, 583 (Fla. 2004). Failure to demonstrate all four prongs above is fatal to such a claim. Under federal law, whether to call a particular witness is generally a question of trial strategy, which seldom, if ever, will be second-guessed. See *United States v. Costa*, 691 F.2d 1358, 1364 (11 Cir. 1982); *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995). Thus, to show that counsel's conduct was unreasonable, Petitioner must demonstrate that no competent counsel would have taken the action that his counsel did take. See *Chandler*, 218 F.3d at 1315. The prejudice prong in failing to call a witness is a heavy one because it requires "allegations of what a witness would have testified to" which are often "largely speculative." *Sullivan v. DeLoach*, 459 F.3d 1097, 1109 (11th Cir. 2006) (quoting *United States v. Guerra*, 628 F.2d 410, 413 (5th Cir. 1980)). Speculation about what witnesses could have said is not enough to

establish the prejudice-prong of *Strickland*. See *Conklin v. Schofield*, 366 F.3d 1191, 1204 (11th Cir. 2004). And, Petitioner cannot maintain an ineffective assistance of counsel claim "simply by pointing to additional evidence that could have been presented." *Van Poyck v. Fla. Dep't of Corr.*, 290 F.3d 1318, 1324 (11th Cir. 2002).

First, Petitioner has not demonstrated in the state forum or here that Mr. Gibbs would have been available to testify at the time of Petitioner's trial. This is fatal to his ineffective assistance of counsel claim. See *Reed v. Sec'y, Fla. Dep't of Corr.*, 767 F.3d 1252, 1262 (11th Cir. 2014); *Nelson v. State*, 875 So. 2d 579 (Fla. 2004). Second, Petitioner has also not provided any affidavit or declaration from Mr. Gibbs that he would have testified as suggested by Petitioner, much less that he would have admitted to consummating a cocaine deal with Petitioner while in Petitioner's vehicle at the McDonalds drive-thru. Consequently, Petitioner cannot demonstrate *Strickland* deficiency or prejudice arising from counsel's failure to call Mr. Gibbs as a defense witness at trial, much less that the proffered testimony would have resulted in an acquittal of the charges. See *Fugate v. Head*, 261 F.3d 1206, 1239, n. 54 (11th Cir. 2001). This too is fatal to Petitioner's claim.

Petitioner cannot maintain an ineffective assistance of counsel claim "simply by pointing to additional evidence that could have been presented." *Van Poyck*, 290 F.3d at 1324. The court's finding that Petitioner cannot establish *Strickland* prejudice, which was affirmed on appeal, is more than supported by the record. Because the rejection of the claim in the state forum was not contrary to nor an unreasonable application of *Strickland*, the trial court's finding should not be disturbed here, therefore, claim 5 is **DENIED**. See *Williams*, 529 U.S. at 412.

4. Failure to Properly Litigate Fourth Amendment Issue.

In claim 7, Petitioner asserts that counsel was ineffective for failing to properly litigate the Fourth Amendment¹⁶ issue during Petitioner's motion to suppress hearing. (DE 1 at 15.) Petitioner contends counsel should have argued that the vehicular stop as he was leaving the McDonalds, but prior to getting on the highway, was illegal, lacking probable cause, because there was no evidence that he violated any traffic or criminal laws. (*Id.*) Therefore, Petitioner asserts the evidence seized from his vehicle should have been suppressed. (*Id.*)

"The Fourth Amendment only prohibits 'unreasonable searches and seizures.'" *United States v. Virden*, 488 F.3d 1317, 1321–22 (11th Cir. 2007) (quoting U.S. Const. amend. IV.). "Ordinarily, the seizure of personal property is *per se* unreasonable unless the seizure is pursuant to a warrant issued upon probable cause." *Virden*, 488 F.3d at 1321–22 (citing *United States v. Place*, 462 U.S. 696, 701, (1983)). However, the search and seizure of vehicles without a warrant is permissible when the police have probable cause to believe a vehicle contains contraband. *Virden*, 488 F.3d at 1321 (first citing *United States v. Watts*, 329 F.3d 1282, 1285 (11th Cir. 2003); then citing *United States v. Holloman*, 113 F.3d 192, 195 (11th Cir. 1997)); see also *United States v. Pierre*, 825 F.3d

¹⁶ As relevant here, the rule of *Stone v. Powell*, barring federal habeas corpus review of a Fourth Amendment claim where the state provided an opportunity for full and fair litigation of the claim, does not apply to the Sixth Amendment claim of ineffective assistance of counsel based on deficient representation with respect to a Fourth Amendment issue. See *Kimmelman*, 477 U.S. at 375; *Zakrewski v. McDonough*, 455 F.3d 1254 (11th Cir. 2006). "Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that this Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Kimmelman*, 477 U.S. 365 at 375.

1183, 1192 (11th Cir. 2016) (citing *United States v. Simmons*, 172 F.3d 775, 778 (11th Cir. 1999)). "Probable cause exists when there is 'a fair probability that contraband or evidence of a crime will be found.'" *Virden*, 488 F.3d at 1322 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). Further, the "plain-view" doctrine authorizes a warrantless search where "(1) [a]n officer [was] lawfully located in the place from which the seized object could be plainly viewed and [had] a lawful right of access to the object itself; and (2) the incriminating character of the item is immediately apparent." See *United States v. Miller*, 326 F. App'x 513, 516 (11th Cir. 2009) (finding plain view doctrine permits officers to seize a gun from a vehicle without a warrant following traffic stop where the officers had properly stopped vehicle for reckless driving) (quoting *United States v. Smith*, 459 F.3d 1276, 1290 (11th Cir. 2006)). Further, under "the inevitable discovery exception, if the prosecution can establish by a preponderance of the evidence that the information would have ultimately been recovered by lawful means, the evidence will be admissible." *Virden*, 488 F.3d at 1322 (citing *Nix v. Williams*, 467 U.S. 431, 434 (1984)).

At the suppression hearing, Detective Munson testified that, on September 14, 2010, he received a tip from a reliable CI he has worked with for years prior to this incident. (DE 11-1 at 5-7 [T. 5-7].) Detective Munson testified the CI advised him that someone was looking to buy a prescription for Oxycodone he had received from his doctor. (*Id.* at 7-9 [T. 7-9].) At the time, the CI had not filled the prescription but was going to go to a pharmacy on Broward Boulevard to fill it. (*Id.* at 8 [T. 8].) After requesting permission to proceed with the transaction, Detective Munson testified he and others set up surveillance at the pharmacy. (*Id.* at 9 [T. 9].) After the CI arrived at the scene, Detective Munson observed another vehicle occupied by an unidentified female and Petitioner

arrive at the scene. (*Id.* at 10 [T. 10].) Mr. Gibbs then made contact with the Petitioner, who was sitting in the passenger seat, and a hand-to-hand exchange was made. (*Id.* at 10, 25–26 [T. 10, 25–26].)

Detective Munson testified that he could see Petitioner clearly because there were no tints on the window of the SUV. (*Id.* at 24 [T. 24].) Although Detective Munson testified that he observed Petitioner exchange something with Mr. Gibbs, he “could not tell what it was.” (*Id.* at 27 [T. 27].) After the exchange, Detective Munson testified the CI and the female filled the drug prescriptions, and thereafter, the female went into a McDonalds where she was observed exiting a short time later carrying a McDonalds bag, later used to hold the white pharmacy bag containing the prescription drugs. (DE 11-1 at 17 [T. 17].) Later, Mr. Gibbs was observed entering Petitioner’s vehicle at the McDonalds carrying a McDonalds bag. (*Id.* at 30–31 [T. 30–31].) Petitioner drove through the McDonalds’ drive-thru, ordered a soda, and shortly thereafter Mr. Gibbs exited the vehicle empty handed. (*Id.* at 30–31 [T. 30–31].) Thereafter, Detective Munson testified he received a call from the CI confirming that he and the female had received \$400 for their services in obtaining the prescription drugs. (*Id.* at 20, 35 [T. 20, 35].)

After the deal was completed, Detective Munson testified Petitioner left the McDonalds driving down 441 when he conducted a vehicular traffic stop. (*Id.* at 32 [T. 32].) When Detective Munson approached Petitioner’s vehicle, he observed the open McDonalds inside the vehicle, sitting on top of the cup holder shelf. (*Id.* at 20, 32 [T. 20, 32].) Because the McDonalds bag was open, Detective Munson testified he was able to observe the pharmacy bag inside it. (*Id.* at 20, 32 [T. 20, 32].) After asking Petitioner to exit the vehicle and retrieving the McDonalds bag and other items from the vehicle,

Detective Munson testified that he arrested Petitioner. (*Id.* at 20 [T. 20].)

When considering the testimony adduced at the suppression hearing in the light most favorable to the prosecution, the trial court's denial of the motion to suppress was proper, and Petitioner cannot demonstrate *Strickland* prejudice arising from counsel's failure to argue that the vehicular stop was unlawful. In the Rule 3.850 proceeding, the trial court denied relief on this claim finding no *Strickland* deficiency or prejudice because Detective Munson's testimony demonstrated the officer had "[a] founded suspicion to stop the Defendant's vehicle." (DE 12-1, Ex. 18 at 186.) The trial court's finding was subsequently affirmed on appeal. *Woods*, 2023 WL 5767804 at *1; (DE 12-1, Ex. 25 at 280.)

Under the totality of the circumstances present here, the trial court did not err in finding Detective Munson had probable cause to stop Petitioner's vehicle. Given Detective Munson's testimony, the officer had probable cause to believe that Petitioner had conducted an unlawful drug deal at the McDonalds.¹⁷ Further, when Detective Munson approached Petitioner's vehicle, the McDonalds bag containing the prescription drugs was in plain view. Consequently, Petitioner has not demonstrated that the suppression motion would have been granted but for counsel's failure to pursue the arguments now raised by Petitioner. The findings of the trial court, which were subsequently affirmed on direct appeal, were not an unlawful application of federal constitutional principles, therefore, claim 7 is **DENIED**.

¹⁷ In fact, Petitioner admits as much at trial, claiming he provided Mr. Gibbs with cocaine.

5. Cumulative Effectives of Ineffective Assistance of Counsel.

In claim 8, Petitioner asserts that the cumulative effects of counsel's deficiencies affected the outcome of his trial and warrants vacatur of his convictions. (DE 1 at 17.)

When the claim was raised as ground 8 in the Rule 3.850 proceeding, the trial court denied relief finding the claim meritless because each claim was addressed individually and found meritless, and that denial was subsequently affirmed by the appellate court. See *Woods*, 2023 WL 5767804 at *1; (DE 12-1, Ex. 18 at 187; DE 12-1, Ex. 25 at 280.)

Petitioner has not demonstrated here nor in the state forum that the actions or inactions of his attorney, regardless of whether they are considered individually or cumulatively, prejudiced him under *Strickland*. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." *Strickland*, 466 U.S. at 689; *Bell v. Cone*, 535 U.S. 685, 702, (2002). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Premo v. Moore*, 562 U.S. 115 (2011). The fact that Petitioner's attorney may have proceeded differently is insufficient to meet both prongs of the *Strickland* standard. *Strickland*, 466 U.S. at 687. In any event, as discussed above, Petitioner has not demonstrated deficiency or prejudice under *Strickland* arising from counsel's failure to pursue the nonmeritorious claims raised in this federal proceeding. Thus, the rejection of this claim, raised by Petitioner in his amended Rule 3.850 Amended Motion, is entitled to §2254 deference, therefore, claim 8 is **DENIED**.

IV. 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 (2009) (first citing *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000); then citing *Wilkinson v. Dotson*, 544 U.S. 74, 78–83 (2005)). Thus, when a district court rejects Petitioner's constitutional claims on the merits, Petitioner 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. However, when the district court rejects a claim on procedural grounds, Petitioner must show that "[j]urists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* Upon consideration of the record, the Court finds that no certificate of appealability shall issue.

V. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The § 2254 Petition (DE 1) is **DENIED**.
2. Judgment in favor of Respondent shall be entered separately.

3. A Certificate of Appealability is **DENIED**.
4. All pending motions not otherwise ruled upon are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of February,
2025.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

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