In the
United States Court of Appeals
For the Second Circuit

August Term 2024
No. 23-7097

MALEEK JONES,

Petitioner-Appellee,

v.

SHARONDA CARLOS, COMM. CTDOC,

*Respondent-Appellant,**

ROLLIN COOK, COMM. CTDOC,

Respondent.

Appeal from the United States District Court
for the District of Connecticut
No. 3:19-cv-1691, Janet C. Hall, District Judge, Presiding.
(Argued October 25, 2024; Decided November 10, 2026)

Before: PARKER, SULLIVAN, and LEE, *Circuit Judges.*

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* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Commissioner of the Connecticut Department of Correction Sharonda Carlos is automatically substituted for former Commissioner Angel Quiros, in his official capacity, as Defendant-Appellee.

The Clerk of the Court is respectfully instructed to amend the caption to conform with the above.

Appellant Sharonda Carlos, Commissioner of the Connecticut Department of Corrections, appeals from a judgment of the United States District Court for the District of Connecticut (Hall, J.) granting the application of Appellee Maleek Jones for a Writ of Habeas Corpus. Jones was tried and convicted in 1995 and sentenced to 65 years' imprisonment for the murder of Eddie Harp. Harp was shot and killed in his car outside Saint Raphael's Hospital in New Haven, Connecticut in October 1992. Jones unsuccessfully appealed his conviction in state courts and then unsuccessfully sought state habeas corpus relief on two occasions.

In 2019, after Jones had exhausted his options in Connecticut courts he sought habeas relief in federal court, raising several issues. The District Court granted him relief on the grounds that he had received ineffective assistance of counsel at trial and the trial court had erroneously excluded key exculpatory evidence. We agree with the district court as to the claim of ineffective assistance of counsel, and we AFFIRM the judgment. Judge Sullivan dissents in a separate opinion.

RYAN CHABOT (Alan Schoenfeld, *on the brief*), Wilmer Cutler Pickering Hale and Dorr LLP, New York, NY, *for* Petitioner-Appellee.

NATHAN J. BUCHOK, Appellate Bureau, Office of the Chief State's Attorney, Rocky Hill, CT, *for* Respondent-Appellant.

BARRINGTON D. PARKER, *Circuit Judge*:

Eddie Harp was shot and killed in his car outside Saint Raphael's Hospital in New Haven, Connecticut in October 1992. Maleek Jones was tried and convicted for the murder in March 1995. He was incarcerated until his release in 2023. At his trial, no physical evidence placed him at the crime scene, and the State's case principally relied on the testimony of one eyewitness: Tyrone Spears. Spears, who became a government cooperator after confessing to shooting Harp,

testified that he murdered Harp with the help of two men, including Jones. However, Spears's testimony was directly contradicted by a statement that Sheila McCray, a nurse at the hospital, gave to police. Shortly after the shooting, McCray told police she saw only two shooters and provided them with descriptions of the two shooters – neither of which matched Jones. In the following days, she was shown a photographic lineup that included a picture of Jones and, when asked to focus on Jones, told the officers that he was not one of the two men she had observed. McCray was the only disinterested eyewitness to the shooting and the only potential trial witness of consequence who had no police record or connection to any of the alleged shooters.

From the beginning, Jones's trial counsel, Leo Ahern, was aware of McCray. Ahern also knew about the eyewitness statements McCray had given to investigating officers within days of Harp's death. Despite the obvious importance of McCray's potential testimony, Ahern failed to investigate her. He did not call her, contact her, interview her, or subpoena her as a witness at trial. Instead, Ahern told Jones's family to hire a private investigator with their own resources. They did so, but the investigator they engaged withdrew after completing roughly two days' worth of work because the family was unable to

pay his fee. Ahern also failed to use funds available from the Office of the Public Defender ("OPD") to hire a private investigator to interview McCray or to conduct any other investigation.

At trial, the jury convicted Jones of murder, conspiracy to commit murder, and carrying a pistol without a permit. He was sentenced to 65 years' imprisonment. Jones then unsuccessfully directly appealed his conviction and twice petitioned for habeas relief in state court. Both times, the state habeas petitions were denied.

After exhausting his options in Connecticut courts, Jones sought federal habeas relief. In 2023, the District of Connecticut (Hall, J.) granted Jones's petition in a careful, thoughtful, and thorough opinion. The district court concluded that Jones had received ineffective assistance of counsel at trial and that the trial court had erroneously excluded key exculpatory evidence. On appeal, the State argues that it was improper for the district court to grant habeas on either ground, but we rule only on Jones's claim of ineffective assistance of counsel. And with regard to that claim, we agree with the district court. Mindful that Jones is not entitled to relief under 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), unless he establishes that the state court's

determination was contrary to or an unreasonable application of clearly established Federal law, we conclude that that high bar has been passed and, accordingly, we AFFIRM the judgment.

BACKGROUND

In the early 1990s, Jones was a member of a street gang known as the "Red Line." The Red Line consisted of about eight people who sold narcotics in the Edgewood Avenue area of New Haven. The Red Line engaged in a sometimes-violent rivalry with a group of individuals who associated with someone named Steven Gary. In at least one instance, Jones and Gary had a serious physical altercation. At one point, Gary's group and the Red Line exchanged gunfire in Gary's neighborhood.

On October 14, 1992, at roughly 1:30 AM, Eddie Harp—a friend of Gary—drove his station wagon into the parking lot of Saint Raphael's Hospital in New Haven. Harp told a security officer that he was at the hospital to visit McCray, a nurse at the hospital and one of his childhood friends. Harp tried to leave the hospital around 2:10 AM. However, after Harp entered his car, he was shot and killed.

After the shooting, the police interviewed McCray and took a statement from her in which she said that she witnessed the shooting and that there were two shooters. According to the arrest warrant later issued for Jones, which was based in part on McCray's statements:

> McCray informed investigators that two (2) Black males, with handguns, were shooting at the vehicle driven by Eddie Harp. [Ms.] McCray stated the shooting occurred in the area of Chapel and Beers Street and provided the following physical and clothing description[:] Subject #1, Black male, approximately 6'1", black jeans, black sneakers, and black jacket with black knit cap/hood. Subject #2, Black male, approximately 5'9", similar clothing as subject 1, however the jacket was longer than waist length without a hood.

Sp. App'x at 8 (alterations in original).

In the following days, police officers interviewed McCray on two additional occasions and showed her a photo array that included Maleek Jones. When directed by the officers to a photograph of Jones, McCray told the officers that he was not one of the individuals she saw shooting Harp.

McCray was the only eyewitness who was not an interested party. Two of the other eyewitnesses, Gene "Pepper" John and Tyrone Spears, both shot at Harp. Pepper died before the trial. Spears, for his part, entered into a cooperation agreement with the prosecutors that permitted him to plead to guilty to aiding and abetting manslaughter in the first degree—a charge that carried a maximum

sentence of 20 years—rather than facing murder charges and a potential 60-year sentence. Spears then became the government's main witness, and its only eyewitness. He would go on to testify that he, Pepper, and Jones were all involved in the shooting. In her conversations with the police, McCray, who had no association with any of the suspects, repeatedly identified only two shooters, neither of whom looked like Jones.[1]

Special Public Defender[2] Leo Ahern was appointed as Jones's trial counsel. Ahern did not hire an investigator, despite the funding the OPD made available for all Special Public Defenders to do so. Instead, Ahern recommended that the Jones family hire their own private investigator. Jones's family took steps to hire an investigator but ultimately could not pay his fees, and the investigation yielded nothing of note, ending after the family was billed for only 16.5 hours of investigative work. During the relatively brief investigation, the investigator did not contact McCray.

[1] The only other potential eyewitness, James Bailey, was not disinterested because he was "acquainted with Mr. Jones" before the shooting, and admitted that he was in the area of the shooting to sell a rival brand of cocaine. Joint App'x at 582, 908.

[2] A "Special Public Defender" is a local defense attorney unaffiliated with the OPD; Mr. Jones was unable to be represented by an attorney from the OPD due to a "conflict of interest." Sp. App'x at 9.

The trial took place in March 1995. Well before the trial, Ahern was given access to the arrest warrant which included McCray's statement explaining that there were only two shooters and describing the two shooters, neither of whom physically resembled Jones. According to the prosecutor, Ahern had open access to the State's investigation file from "the very first day . . . long before he was entitled to any of it." Joint App'x at 456. In Jones's Second Amended Petition, he explained that in addition to the arrest warrant, the State's file included reports from Hospital Security Guard Louis Yanac, investigator's notes, and McCray's statements to the New Haven Police Department. The file's contents indicated that McCray repeatedly told police that she witnessed the shooting, during which she only saw two shooters, and that she estimated both shooters weighed 130-140 pounds. McCray had indicated that she could positively identify both subjects and offered detailed descriptions of both shooters' appearance and clothing. Notably, her descriptions did not match Jones, who had a lighter skin tone than the men McCray described and weighed about 200 pounds.

Despite these gold-plated leads to McCray, Ahern made no efforts to contact her or to explore what her testimony might look like. He did not call or visit or subpoena her. Her whereabouts were conspicuous as she was a resident of the

New Haven area, had a Connecticut driver's license, and was employed as a nurse at the hospital. Ahern also knew that the investigating officers had ready access to McCray. Moreover, Jones asked him to call McCray and, at trial, Jones complained to the trial judge that no one had called McCray as a witness. Despite all of this, Ahern did not contact her.

Ahern's decision not to call McCray was particularly inexplicable given his attempt at trial to argue a "two-shooter theory." Ahern's trial strategy focused on casting doubt on the State's case by introducing evidence that only Spears and Pepper (and not Jones) were present at the shooting. First, Ahern called Lee Bember, a friend of Jones, Spears, and Pepper, to the stand. Outside the presence of the jury, Bember testified that hours after the murder, the now-deceased Pepper confessed to Bember that "last night me and T.Y. [Tyrone Spears] caught a body." Supp. Joint App'x 448–49. Bember went on to explain that by "caught a body," Pepper meant that he and Spears "killed this dude last night." *Id.* Pepper's confession to Bember specifically named Spears but made no mention of Jones. Shortly after the murder, Bember signed a statement to this effect for the investigating officers. At trial, however, the State objected to the admission of

Bember's testimony on hearsay grounds, and the trial court sustained the objection.

Ahern also presented testimony from two other members of the Red Line, Tyrese White and Ernestine Bember ("Ernestine"). White and Ernestine testified that they spoke with Spears shortly after the murder, and that Spears told each of them that he and Pepper were present at the shooting but made no mention of Jones. Ernestine also testified that he had a conversation with Pepper a month after the shooting, during which Pepper stated that the shooting was the result of a botched robbery attempt by him and Spears—and once again Pepper made no reference to Jones.

The State's case turned on the testimony of a single eyewitness: Tyrone Spears, one of the individuals who admitted to shooting Harp, and who was sixteen at the time of the shooting. Under his plea deal, Spears pled guilty to aiding manslaughter and assault and testified for the government. At trial, Spears testified that three individuals—Jones, Pepper, and himself—all shot at Harp's car. Spears explained that he stood on the passenger's side of Harp's car while two other shooters, Jones and Pepper, stood on the driver's side. The available ballistics evidence, however, was not consistent with Spears's account. Instead, as

Ahern tried to show during cross-examination, the ballistics evidence demonstrated that all of the bullet holes were on either the driver's side or the rear of the vehicle. No physical evidence at trial linked Jones to the killing, and no other eyewitness accounts were presented at trial.

Ahern never called McCray to testify, despite the fact that she was the only other disinterested, living eyewitness to the crime and that she had told the police she only saw two shooters. Instead, Ahern requested the court give the jury a missing witness charge, and instruct the jury they could assume McCray would have given testimony unfavorable to the state. The state trial court denied Ahern's request.

The jury convicted Jones on all charges, and the judge later sentenced him to 65 years' imprisonment. Jones appealed the verdict to the Connecticut Appellate Court where he argued, *inter alia*, that Bember's testimony was not hearsay, and that the exclusion of Bember's testimony violated his right to present a defense. *State v. Jones*, 700 A.2d 710, 714–15 (Conn. App. Ct. 1997). He also argued that "because of his indigency, he had been denied proper investigation and preparation of his case, and thus his right to a fair trial had been violated." *Id.* at 721. The state appeals court rejected Jones's arguments and upheld the

conviction, reasoning that the trial court correctly excluded Bember's testimony, *id.* at 716, and that his fair trial argument was properly construed as an ineffective assistance of counsel claim, which "must first be resolved in a habeas corpus proceeding," *id.* at 721–22.

In 1998, Jones filed a habeas petition in Connecticut state court. In the petition, Jones presented two arguments: (1) he broadly argued that Ahern provided ineffective assistance of counsel but did not directly address Ahern's failure to investigate McCray or call her as a witness, and (2) he claimed he was innocent. The state court held a three-day trial on the petition in 2009. During that trial, Ahern was called to testify on Jones's claim of ineffective assistance of counsel and was asked about his "legal strategy in not bringing a witness [such as McCray] who would testify that, in fact, the persons she saw" were not Jones. Supp. Joint App'x at 1046. Ahern, conceding his performance was deficient, replied, "I don't know, maybe—maybe it was a mistake on my part." *Id.* He stated that even though sometimes "you can call witnesses that can hurt you," he was "not saying that was my thinking at this particular juncture." *Id.* at 1055. Ahern also admitted that "it was a mistake on [his] part, not to search her out and find out more." *Id.*

With respect to Jones's claim of actual innocence, that claim largely turned on new testimony from Spears, who recanted his testimony against Jones at the initial trial. Specifically, at the habeas trial, Spears explained that he lied about Jones being present when he and Pepper shot Harp because, at the time of his original testimony, he was young, scared, and angry at Jones. He also testified that, based on his conversations with prosecutors, he believed that he would receive a longer sentence if he refused to implicate Jones. And so, Spears testified that he had acted on his anger at Jones's original criminal trial by testifying that Jones was with him at the shooting when, in fact, "he wasn't." Supp. Joint App'x at 997. Nonetheless, the state court denied the petition. *Jones v. Warden*, No. CV980411361S, 2009 WL 2961443, at *6 (Conn. Super. Ct. Aug. 13, 2009). The state trial court held that Jones's ineffective assistance claim failed because he was not prejudiced by Ahern's performance. While acknowledging that Ahern "couldn't remember what he did or why he did it," the court held that "[p]roof of prejudice to the defendant by the claimed multitude of alleged shortcomings of defense counsel is sadly lacking." *Jones*, 2009 WL 2961443, at *2, *5.

The court also found Spears's recantation of his initial trial testimony was not credible. In contrast to his testimony at the habeas trial, the court noted that

Spears's testimony at the criminal trial was "extremely detailed" concerning the events leading up to, during, and after the shooting. *Id.* at *4. Given the level of detail, the court found "it far more reasonable to assume that [when he testified at the criminal trial] Spears was recalling details that he remembered and experienced rather th[a]n to believe that he made it all up as a novelist would do." *Id.* at *5. The court thus concluded that the recantation appeared to be an attempt to repair his reputation for "snitch[ing]" on Jones. *Id.*

Jones appealed, and in 2012, the appellate court summarily affirmed. *Jones v. Comm'r of Corr.*, 40 A.3d 344 (Conn. App. Ct. 2012) (per curiam). The Connecticut Supreme Court denied certiorari. *Jones v. Comm'r of Corr.*, 47 A.3d 884 (Conn. 2012).

In August 2012, Jones filed a second state habeas petition, arguing that his first state habeas counsel—Bruce McIntyre—provided ineffective assistance of counsel for, *inter alia*, failing to investigate and locate McCray. Jones claimed that McCray's testimony, had it been included in the habeas proceedings, would have established Ahern's ineffective assistance because it would have corroborated Spears's testimony that Jones was not at the scene of the crime.

The second state habeas trial commenced in 2015 and ran for five days. For the first time, Jones's counsel called McCray as a witness. As the court noted, the "testimony presented to this court [was] [McCray's] first at any proceeding regarding the shooting." *Jones v. Warden*, No. CV124004861S, 2016 WL 921751, at *8 (Conn. Super. Ct. Feb. 11, 2016). During the proceeding, McCray recounted "seeing two guys" when "shots rang out." Supp. Joint App'x at 1343. She explained that she ducked, came back up, and then saw "the two guys just take off running." *Id.* at 1346. She reaffirmed multiple times that there were "two individuals" involved in the shooting. *Id.* at 1352, 1393.

In response to this testimony, the state court remarked that "Sheila McCray . . . potentially could have presented testimony in the first habeas proceeding that arguably could have been used to corroborate Spears' recantation," namely that "McCray informed investigating detectives that she had seen two black males with handguns shoot at the vehicle being driven by the victim" and "provided physical and clothing descriptions of these two individuals to the police." *Jones*, 2016 WL 921751, at *7–*8. According to a report prepared by Detective Thomas Trocchio, the lead detective on the case, McCray provided the on-scene officer with a description of both suspects, and said both shooters were of slim build and

weighed "130 to 140 pounds." Sp. App'x at 62, 65. In contrast, at time of his arrest, Jones weighed approximately 200 pounds. Sp. App'x at 65, n. 284.

The state court nevertheless concluded that "[w]hile McCray may well be able to recall events of that tragic evening, the accuracy of her recollection of events almost a quarter of century ago is highly questionable." *Jones*, 2016 WL 921751, at *9.

Jones appealed the unfavorable decision, but the appellate court again summarily affirmed. *Jones v. Comm'r of Corr.*, 194 A.3d 905 (Conn. App. Ct. 2018) (per curiam). The Connecticut Supreme Court again denied certiorari. *Jones v. Comm'r of Corr.*, 204 A.3d 1159 (Conn. 2019).

Out of options in state court, in 2019, Jones initiated a federal habeas proceeding under 28 U.S.C. § 2254 and filed an amended petition in 2021.[3] He raised four grounds for relief: (1) ineffective assistance of counsel on the part of Ahern for his failure to investigate McCray and call her as a witness, (2) the State's withholding of evidence—namely, the State's withholding of Spears's plea agreement—and presentation of false testimony from Spears, (3) the state court's wrongful exclusion of testimony regarding Pepper's confession, and (4) ineffective

[3] This was Jones's second federal habeas petition. Jones had previously filed a federal habeas petition in July 2013. That petition was dismissed for failure to exhaust state court remedies.

assistance on the part of Ahern for failure to retain an expert in crime scene reconstruction or ballistics. In August 2023, the district court granted Jones's petition based on the first and third grounds he raised: ineffective assistance of counsel for failure to investigate and present testimony from McCray and erroneous exclusion of testimony that Pepper confessed to others he had killed Harp with Spears, but not with Jones.

As to Jones's first ground, ineffective assistance of counsel based on Ahern's failure to investigate McCray and call her as a witness, the district court concluded that under *Strickland v. Washington*, 466 U.S. 668 (1984), Ahern could not provide reasonable strategic reasons for not investigating McCray, noting that Ahern repeatedly acknowledged that he may have made a "mistake." Sp. App'x at 73–74. The district court also addressed Ahern's purported concern that "sometimes witnesses come on and say things you don't want them to say," Supp. Joint App'x at 1055, concluding that such an "entirely hypothetical justification[] underscore[d] why an investigation was so critical," Sp. App'x at 74. The district court further observed that because of hearsay rules, Ahern could not have reasonably expected to introduce McCray's testimony in any other way. And finally, the district court concluded that Ahern's failure prejudiced Jones, because

McCray would have provided exculpatory evidence directly contradicting the State's star witness and would have raised reasonable doubt as to Jones's guilt.

The district court also granted Jones's petition on another ground: that he was deprived of a fair trial because the trial court erroneously excluded Bember's testimony, in which he would have explained that Pepper confessed to murdering Harp alongside Spears without inculpating Jones. The trial court, however, ruled the testimony was inadmissible hearsay. The district court disagreed. It concluded that, under Connecticut evidentiary law, Bember's testimony regarding Pepper's confession was admissible, and that this exculpatory evidence would also have raised a reasonable doubt as to Jones's guilt. This appeal followed.

DISCUSSION

Jones filed his federal habeas petition under 28 U.S.C. § 2254, as amended by AEDPA. AEDPA requires federal courts to afford substantial deference to the state court and overturn a state court's decision only where it is "contrary to, or involved an unreasonable application of, clearly established Federal law," or was "based on an unreasonable determination of the facts in light of the evidence presented." 28 U.S.C. § 2254(d).

The State challenges the district court's grant of habeas on the grounds that the district court failed to give adequate "AEDPA deference" to the Connecticut state courts that previously adjudicated Jones's claims and instead substituted its own judgment. The State argues that Jones failed to demonstrate that the state court's decision "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). Accordingly, the State contends that the district court's ruling should be reversed. This court "review[s] *de novo* a district court's order granting a petition for a writ of *habeas corpus*." *Carmichael v. Chappius*, 848 F.3d 536, 543–44 (2d Cir. 2017).

We disagree with the State and affirm the judgment of the district court. In granting Jones's petition, the district court reviewed the extensive procedural history of this case and correctly concluded that no fairminded jurist could have reached the same conclusion as the state court. We agree. Admittedly, the burden of proof required to obtain relief under 28 U.S.C. § 2254, as amended by AEDPA, is a difficult one. *See Klein v. Martin*, 146 S. Ct. 589, 596 (2026) (per curiam) ("As we have noted many times, AEDPA sharply limits federal review of habeas claims raised by state prisoners."). However, if that high standard is met in any case, it

is met here. Jones's trial attorney straight-forwardly failed to provide effective representation, and Jones was prejudiced as a result. The failure to investigate a key eyewitness to the underlying crime constitutes deficient performance under *Strickland*, especially when that decision is not grounded in any reasonable, or even articulable, trial strategy. Further, neither the first nor second state habeas court ever analyzed McCray's testimony in the context of Jones's trial counsel's performance. Indeed, McCray's name was not even mentioned in the post-trial brief submitted on Jones's behalf to the first state habeas court. To the extent the second state habeas court found, in passing, that McCray's testimony failed to undermine confidence in the outcome of Jones's criminal trial, we find that no fairminded jurist could have reached the same conclusion.

Because we affirm the district court's grant of Jones's habeas petition on this basis, we do not address the question of whether the trial court improperly excluded Bember's testimony.

I.

We evaluate Jones's claim of ineffective assistance of counsel under the standard set by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must first demonstrate that their counsel's

performance was deficient—"f[alling] below an objective standard of reasonableness." 466 U.S. at 688; *see also Cox v. Donnelly*, 387 F.3d 193, 197 (2d Cir. 2004). Second, a defendant must show that that they were prejudiced by that deficient performance. *Strickland*, 466 U.S. at 691. Specifically, a defendant must demonstrate reasonable probability that, but for counsel's deficient performance, the defendant would not have been found guilty. *Id.* at 694; *Cox*, 387 F.3d at 197.

A.

We begin with the first *Strickland* prong, deficient performance of counsel. Under *Strickland*, constitutionally effective counsel embraces a "wide range of professionally competent assistance," and "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." 466 U.S. at 690. The performance inquiry examines the reasonableness of trial counsel's actions under "all the circumstances," from the perspective of trial counsel at the time. *Id.* at 688–89. As the Supreme Court has instructed, "[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight." *Id.* at 689.

In assessing the performance prong, this Court must therefore apply a "heavy measure of deference to counsel's judgments." *Id.* at 691. Accordingly, this Court "will not normally fault counsel for foregoing a potentially fruitful course of conduct if that choice also entails a 'significant potential downside.'" *Greiner v. Wells*, 417 F.3d 305, 319 (2d Cir. 2005) (quoting *Sacco v. Cooksey*, 214 F.3d 270, 275 (2d Cir. 2000)). Furthermore, because this petition comes to us under § 2254, AEDPA deference applies. This means that a claim of ineffective assistance of counsel is subject to a "doubly deferential standard of review that gives both the state court and the defense attorney the benefit of the doubt." *Burt v. Titlow*, 571 U.S. 12, 15 (2013) (internal quotation marks omitted). Under this "doubly deferential" standard, Jones must "demonstrate that it was necessarily unreasonable" for the second habeas court to conclude that "he had not overcome the strong presumption of [counsel's] competence." *Cullen v. Pinholster*, 563 U.S. 170, 190 (2011). Looking to *Strickland*'s first prong, we conclude that Jones meets this high standard.

i.

Jones claims Ahern's performance was deficient for two reasons. He asserts a failure-to-investigate claim, namely that Ahern failed to further investigate

McCray as a potentially exculpatory witness. He also raises a failure-to-introduce-evidence claim, arguing that Ahern's performance was deficient because he failed to call McCray as a witness.

In assessing a failure-to-investigate claim, this Court must examine "whether the known evidence would lead a reasonable attorney to investigate further." *Rivas v. Fischer*, 780 F.3d 529, 547 (2d Cir. 2015) (quoting *Wiggins v. Smith*, 539 U.S. 510, 527 (2003)). The State's undisputed theory of the case was that there were three shooters—Spears, Pepper, and Jones. Meanwhile, Ahern testified before the first state habeas court that a core part of his trial strategy was to convince the jury that there had only been two shooters, neither of which were Jones. Thus, McCray's repeated statements to the police that she saw only two shooters, neither of which matched Jones's appearance, directly contradicted the prosecution's theory and supported Ahern's theory. Furthermore, McCray had no known or prior relationship with Spears, Pepper, or Jones, no gang connections, and no criminal record. As such, her testimony was likely to have been particularly impactful, had it been presented to the jury. Accordingly, like the district court, we discern no legitimate reason why Ahern did not talk to McCray, investigate her statements to the police, or ultimately call her as a witness at trial.

As the district court observed, "[c]onstitutionally effective representation requires that an attorney adhere to an objective standard of reasonableness—that is, the attorney's performance must be reasonable under prevailing professional norms." Sp. App'x at 68 (internal quotation marks omitted). The Supreme Court has long referred to the ABA Standards as guides to determining what is professionally reasonable. *Rompilla v. Beard*, 545 U.S. 374, 387 (2005); *see also Strickland*, 466 U.S. at 688 (recognizing ABA Standards for Criminal Justice as a guide to reasonable professional conduct).

At the time of Jones's 1995 criminal trial, the ABA Standards for Criminal Justice: Prosecution and Defense Function 4-4.1 (3rd ed. 1993) instructed criminal defense attorneys to:

> [C]onduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case . . . The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.

Id. at 387 & n.6. *Strickland* itself also instructs that attorneys have a responsibility to investigate which requires counsel "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."

466 U.S. at 691. That said, our "examination of counsel's efforts" to investigate must take place "on a case-by-case basis." *Greiner*, 417 F. 3d at 321. As a result, "[t]he reasonableness of an investigation is obviously a reflection of the facts of a case." *Id.*

While trial counsel need not articulate why an exculpatory witness's testimony was not investigated if it is "transparent from the record" that an investigation would be impractical or that the testimony sought would not justify the efforts of an investigation, there is nothing to suggest that is the case here. *Greiner*, 417 F.3d at 321–22. *Strickland* instructs us to "apply[] a heavy measure of deference to counsel's judgments" regarding a particular decision not to investigate. 466 U.S. at 691. But here, no reasoned or rational "judgments" were made and, consequently, there were none that might call for deference. *Id.*

In defense of his failure to investigate (or call) McCray, Ahern offered a single vague reason: "[S]ometimes witnesses come on and say things you don't want them to say." Supp. Joint App'x at 1055. But this is not a concern unique to McCray; it happens in any trial. Because nothing in the record suggests that McCray, whom he had never spoken to, would have said "things [Ahern didn't] want [her] to say," this excuse does not supply a basis for AEDPA deference. *Id.*

Moreover, the Supreme Court has held that a failure to investigate and present mitigating evidence at a trial may constitute ineffective assistance, even when doing so may lead to some unfavorable evidence also being admitted. *Williams v. Taylor*, 529 U.S. 362, 396–97 (2000); *see also Lindstadt v. Keane*, 239 F.3d 191, 200 (2d Cir. 2001).

As the district court found, Ahern's concern about the uncertainty of McCray's testimony only serves to underscore the importance of conducting an adequate investigation to assess her potential testimony at trial and whether such testimony would have created reasonable doubt. His failure to do so constituted deficient performance under *Strickland*. Instead of conducting any investigation, Ahern tried to reassign his responsibility for investigating McCray to Jones's family when he recommended that they hire their own private investigator, because he was "apparently [] unaware" that "all requests for investigation services" could and should go through the public defender's office. Sp. App'x at 10; *see also* Supp. Joint App'x at 1038.

Significantly, Ahern's recommendation that Jones's family hire a private investigator demonstrates that he knew an investigator would have been helpful. And yet, when Jones raised to Ahern that his family could not afford to pay for a

private investigator, Ahern did not appear to be aware of, or even look into, alternative sources of funding. Ahern even admitted that he did not "ever ask the state or get funds set aside by the state to pay [the investigator]" and admitted "that was [his] bad," conceding that he failed to even ask the state for funding to support an investigation. Supp. Joint App'x at 1191. As part of that failure, Ahern evinced a lack of understanding as to the process by which the private investigator could receive payment from the state. *Id.* at 1191–92.

The Supreme Court has found deficient performance in similar cases. In *Hinton v. Alabama*, for example, the defendant's attorney "knew that he needed more funding to present an effective defense, yet he failed to make even the cursory investigation of the state statute providing for defense funding." 571 U.S. 263, 274 (2014) (per curiam). In that case, the Supreme Court explained that the attorney's "failure to perform basic research" to determine whether funding for investigation was available constituted "a quintessential example of unreasonable performance under *Strickland*." 571 U.S. at 274. So too here. Ahern's mistaken belief that state funding was not available to complete an adequate investigation into the shooting, or at the very least *contact the only disinterested eyewitness*, thus plainly "constituted deficient performance." *Id.* Ahern had the "duty to make [a]

reasonable investigation[] or to make a reasonable decision that makes [a] particular investigation[] unnecessary." *Id.* (quoting *Strickland*, 466 U.S. at 691). He did neither.

Because Ahern failed to use available state funding, the investigation funded by Jones's family was manifestly inadequate and ended prematurely. The resulting investigative report mentions multiple times—but fails to analyze or suggest further investigation of—the fact that McCray saw only two shooters, and it completely omits that McCray's descriptions of the shooters did not match Jones's appearance. *See* Joint App'x at 978–83. Instead of interviewing McCray to ascertain details about her potential testimony, Jones's investigator relied only on her contemporaneous statements to police. This conclusion is buttressed by McCray's testimony before the second state habeas court that she received no contact from anyone representing Mr. Jones between the date of Harp's death and 1995. No fairminded jurist can seriously contend that an investigator's third-hand summary of McCray's statement to the police—as opposed to talking to her—constitutes a meaningful investigation of the potential testimony of the case's most important witness.

The State's only argument to the contrary is unpersuasive. The state relies on *Greiner v. Wells* to contend that "Jones's failure to investigate claim [is] 'identical to and no greater than his failure-to-introduce evidence argument'" because Ahern was aware of McCray's statements to police at the time. State's Br. at 42 (quoting *Greiner*, 417 F.3d at 322). The State then argues that the failure-to-introduce-evidence claim fails because it was merely a trial strategy decision that "fell well within the wide range of reasonable strategic decisions." *Id.* at 43.

But the State is mistaken for two reasons. First, because Jones's failure-to-investigate claim is legally distinct from a failure-to-introduce evidence argument, *Greiner* doesn't help the State. There, defense counsel had received reports that exculpatory witnesses were "afraid or unwilling to discuss the case." *Greiner*, 417 F.3d at 321 (internal quotations omitted). It was thus "transparent from the record that [defense counsel] could have reasonably believed that the only way to gain information from these potential witnesses would have been by issuing a subpoena. The decision to subpoena a witness, however, is a trial-strategy decision, not an investigatory decision." *Id.* at 321–22. By contrast, here, the record contains no suggestion that McCray was unwilling to speak to Jones's counsel. Instead, Ahern simply failed to contact her. Because Ahern would not have had

to use a subpoena to learn more about what McCray's testimony would look like, the failure-to-*investigate* claim is nothing like the failure-to-*introduce-evidence* claim at issue in *Greiner*.

Second, to the extent that the State argues that Ahern did not need to contact McCray because he was already aware of her statements to police and would not have learned anything relevant from further investigation, that argument plainly misses the mark. As we have explained, the record here does not permit the inference that Ahern did not investigate for reasons of strategy. To start, Ahern testified that his trial strategy involved convincing the jury that there were only two shooters, neither of whom were Jones. When asked why he wouldn't pursue a witness who would testify to just that, Ahern responded that he didn't know, and acknowledged that "maybe it was a mistake on [his] part." Supp. Joint App'x at 1046, 1055. Ahern never once claimed that he did not look further into McCray for any strategic reason or because he already knew what she might say. To the contrary, Ahern testified before the second state habeas court that his concern was the complete opposite—that he did *not* know what McCray would say if she testified. That was so only because he had not bothered to talk to her. And this failure was flatly at odds with the ABA standards and our case law.

Our colleague disagrees. In the dissent's view, Ahern "made a strategic choice not to focus on McCray" because he did not know what she would say. Dissent at 8. At the same time, the dissent finds that Ahern's decision not to investigate McCray was justified because Ahern "knew what [McCray] would say." Dissent at 7. These contradictory conclusions would likely be rejected by fairminded jurists. In a similar vein, the dissent doubts that "counsel's recommendation that Jones hire an investigator" supports our finding that investigation was indeed necessary. Dissent at 5. But the dissent's analysis ignores Ahern's own reflections on this precise issue: "perhaps[] it was a mistake on [his] part, not to search [McCray] out and find out more." Supp. Joint App'x at 1055.

In short, Jones's trial counsel failed to investigate McCray as a potential exculpatory witness at trial despite knowing that she had been with Harp moments before his death, was identified as the only disinterested eyewitness to the shooting and would contradict the State's main witness. These failures, none of which is disputed, rendered counsel's performance constitutionally deficient under *Strickland*.

ii.

This conclusion is congruent with our decision in *Rivas v. Fischer*, where we concluded that "[n]o 'fairminded jurist[]' could agree" that trial counsel's failure to investigate the prosecution's theory as to the time of death, despite this being the "central issue" of the case, was a "'sound trial strategy.'" 780 F.3d at 549–50 (first quoting *Harrington*, 562 U.S. at 101; then quoting *Strickland*, 466 U.S. at 689). The departure in this case is even more egregious than in *Rivas*. There, trial counsel was able to articulate a reason for failing to investigate the time of death, as he felt his client was "well alibied." *Id.* at 548. In contrast, Ahern failed to provide any meaningful reason or strategy as to why he did not investigate McCray except that "sometimes witnesses come on and say things you don't want them to say." Supp. Joint App'x at 1055. Of course, had Ahern investigated McCray or even spoken to her, he would have been able to properly assess whether her potential testimony could have proven helpful to Jones's defense.

Thus, Jones meets the "doubly deferential" standard required by 28 U.S.C. § 2254(d), as he has successfully demonstrated that "it was necessarily unreasonable" for the second habeas court to conclude that "he had not overcome the strong presumption of [counsel's] competence." *Cullen*, 563 U.S. at 190.

This alone would be a sufficient basis to conclude that counsel's performance was constitutionally deficient, but we next turn toward the second ground upon which Jones bases his deficient performance claim: Ahern's decision not to call McCray to the stand.

The analysis here is straightforward, because *Strickland* and its progeny make clear that "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Greiner*, 417 F.3d at 319 (quoting *Strickland*, 466 U.S. at 690–91). Accordingly, if no reasonable professional judgments supported the limitations on the investigation, the "strategic choices made" based on that "less than complete investigation" cannot be reasonable. *Id.* In light of all of this, we conclude that no reasonable professional judgments supported Ahern's decision not to investigate McCray, and thus the decision not to call her as a witness was necessarily unreasonable.

B.

To succeed in his ineffective assistance of counsel claim, it is not enough for Jones to demonstrate Ahern's performance was deficient. Jones must also meet his burden under *Strickland* of establishing prejudice. To do so, a 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. In other words, a defendant must demonstrate that "there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Rivas*, 780 F.3d at 550 (quoting *Strickland*, 466 U.S. at 695). A petitioner challenging a state court's rejection of their ineffective assistance claim once again faces a heightened burden under AEDPA. The petitioner must demonstrate that the state court's determination of non-prejudice was either "contrary to, or involved an unreasonable application of," the *Strickland* standard. *Waiters v. Lee*, 857 F.3d 466, 477 (2d Cir. 2017) (quoting 28 U.S.C. § 2254(d)(1)). Where a state court's finding as to prejudice is "objectively unreasonable," a petitioner succeeds on his prejudice claim. *Rivas*, 780 F.3d at 552. We find that Jones presents the atypical case where this highly deferential standard is met.

Critically, neither the first nor the second state habeas court directly analyzed McCray's testimony in the context of Ahern's performance. McCray played no role in the first state habeas proceeding, and tellingly, her name is never mentioned in the post-trial brief Jones filed in that proceeding. The primary issue before the second state habeas court was the effectiveness of McIntyre, Jones's first

habeas counsel, not the effectiveness of his *trial counsel*, which is the dispositive issue before this Court. To the extent that the state court cryptically and with no analysis stated that McCray's testimony did not "undermine[] confidence in the outcome of . . . the criminal trial," we find that bare bones conclusion was objectively unreasonable. *Jones v. Warden*, 2016 WL 921751, at *9. This is especially true because the second state habeas court analyzed McCray's credibility based on testimony she gave in 2015, not the contemporaneous testimony she would have given had she been called by Ahern at Jones's trial decades earlier.

Each of the habeas courts that looked at this issue agreed that Jones's conviction turned on the testimony of a single, interested witness, Tyrone Spears. Jones argues he was prejudiced because had McCray's testimony been further investigated and presented at trial, it would have directly contradicted the most crucial elements of Spears's testimony. We agree.

McCray's potential testimony, based on the statements she gave to investigators and police, would have injected reasonable doubt in the State's case. "[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." *Strickland*, 466 U.S. at 696. Thus, the less evidence the State has, the more

"confidence in the judgment of conviction . . . may be 'undermine[d]' . . . by a relatively smaller quantity of prejudice than might ordinarily suffice." *Pavel v. Hollins*, 261 F.3d 210, 226 (2d Cir. 2001). Here, further investigation would have revealed that McCray would have testified that she witnessed only two shooters and that she did not recognize Jones's photograph when it was shown to her in a photo array shortly after the shooting. Where, as here, the government's case turned entirely on one eyewitness's testimony, we have little difficulty concluding that counsel's failure to talk with, to investigate, or to call McCray as a witness undermines "confidence in the judgment." *Id.*

In denying Jones's state habeas petition, the second state habeas court sharply discounted the importance of McCray's eyewitness testimony. The state court stated that "although McCray did not see or identify three individuals, that fact alone does not mean that there in fact were only two individuals who shot at Harp in the vehicle." *Jones*, 2016 WL 921751, at *9. But that court's speculation misses the mark. To show prejudice in the habeas context, Jones is not required to disaggregate hypotheticals. He simply had to demonstrate in either state habeas proceeding that there was "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. To do that, Jones would not have needed to prove that there were in fact only two individuals that shot at Harp's vehicle. All he had to do was to create reasonable doubt around the State's three-shooter theory and Spears's testimony. We believe that there is a high probability that McCray's testimony would have achieved this result. Accordingly, we conclude that Jones more than met his burden to establish that there would have been a substantial likelihood of a different result if, but for Ahern's deficient performance, the jury was allowed to hear McCray's testimony. To the extent the state habeas courts disagreed, we find that conclusion also "objectively unreasonable." *Rivas*, 780 F.3d at 552.

The State also contends that regardless of the influence McCray's testimony could have had at trial, the district court erred because it did not afford the second state court's determination as to McCray's credibility the deference mandated by AEDPA. However, this argument also missed the mark because we find the issue of McCray's credibility at Jones's initial trial was never directly addressed by either state habeas court. The first state habeas court never heard McCray testify and thus could not have made a determination about her credibility as a witness. Jones's second state habeas petition was not a challenge to Ahern's performance

at trial but litigated the issue of whether first state habeas counsel—McIntyre—provided ineffective assistance of counsel for failing to investigate McCray.

Indeed, while the second state habeas court talked about Jones's ineffectiveness claim against Ahern, it only did so in context of assessing the effectiveness of McIntyre. When we place the focus on the issue that is before us—the prejudicial effect of Ahern's deficient performance in relation to the 1995 criminal trial—the state court's sparse, hypothetical assessment of the potential impact of McCray's testimony in relation to the criminal trial adds very little of consequence.

To the extent that the state court passingly discounted McCray's 2015 testimony, it did so largely based on purported inconsistencies with the 1995 testimony given by Louis Yanac, the hospital security guard working the night of the murder. The inconsistencies, such as when Yanac and McCray encountered each other on the night of the shooting and the timing of the police's arrival, *see Jones*, 2016 WL 921751, at *9, say little, if anything, about the two most consequential issues during the criminal trial: (1) the number of shooters, and (2) whether Jones was one of the shooters. Yet the state court assigned them great weight, writing that "[a]lthough such differences are not surprising given the

elapse of nearly a quarter of a century since the shooting, they underscore that lack of reliability this court assigns to McCray," and believed the "the accuracy of her recollection of events almost a quarter of [a] century ago is highly questionable." *Id.* And while the state court stated that it "fail[ed] to see how [McCray's] testimony in any way undermines confidence in the outcome of . . . the criminal trial," *id.*, based on the record that was before the state court, we conclude that no fairminded jurist, when focused on the ineffectiveness of *trial* counsel, could have reached that same conclusion.

McCray's 1992 statement to the police also would not have been affected by the lapse of time that caused the state habeas court's concerns in 2015. Crucially, the second state habeas court did not hold that had McCray testified in 1995, Jones would still have been convicted. Instead, it held that *had McCray testified in 2015*, Jones's ineffective assistance of counsel claim would have failed, because the state court discounted "her recollection of events almost a quarter century ago." *Id.* But McCray's degraded memory over the course of nearly twenty-five years would not have been an issue at the 1995 trial.

Simply put, if, after a proper investigation by defense counsel, McCray had testified at Jones's criminal trial consistent with her pretrial statements to police,

her testimony would have unquestionably undermined the State's case. It would have created reasonable doubt as to the number of shooters and the identity of those shooters, and thus, Jones's involvement in the shooting. Given the overall weakness of the State's case against Jones, McCray's potential testimony would have created a substantial likelihood of the jury doubting Jones's guilt. Accordingly, we find that Jones's habeas claim meets the high burden of proof required to obtain relief under 28 U.S.C. § 2254, as amended by AEDPA.

Our colleague in dissent disagrees, arguing that "McCray was hardly a bombshell witness whose testimony would have upended the prosecution's theory of the case." Dissent at 11. Despite the dissent's conclusion on this point, we fail to see how an entire case built on one interested eyewitness would not be severely undermined by a proper, and required, investigation of contradictory testimony from the only disinterested eyewitness. The majority takes our obligation to apply AEDPA deference seriously, but at the end of the day, the standard in a criminal trial requires proof beyond a reasonable doubt.

Our finding of prejudice is once again consistent with our decision in *Rivas*, 780 F.3d at 529. There, we held that a state court's implicit rejection of prejudice was objectively unreasonable. *Id.* at 551–52. We concluded that the conviction

"turn[ed] almost entirely on the relative credibility of the prosecution's expert," and it was clear that the prosecution witness was far less credible and renowned than a potential defense expert who defense counsel ultimately did not follow up with or call to the stand. *Id.* at 551. The prosecution expert's testimony thus went uncontradicted by any other witnesses. *Id.*

Here, the prosecution's star eyewitness was an interested party who received a sharply reduced sentence in exchange for his testimony. That eyewitness account went uncontradicted by any other eyewitness because of Ahern's failure to investigate McCray—the lone disinterested eyewitness—or call her to testify. As the district court properly held, "there [was] no sound reason for Attorney Ahern not to have investigated this clearly significant eyewitness." Sp. App'x at 78. And if McCray had testified, we are confident that the jury would have "had a reasonable doubt respecting [Jones's] guilt." *Strickland*, 466 U.S. at 695. To the extent the second state habeas court found that Jones was *not* prejudiced by Ahern's performance at trial, we conclude that court unreasonably applied *Strickland v. Washington*.

CONCLUSION

We **AFFIRM** the judgment of the District Court.

RICHARD J. SULLIVAN, *Circuit Judge*, dissenting:

Time and again the Supreme Court has warned us off the path that the majority embarks upon today. The Court has stressed that AEDPA's "strict standards govern the grant of federal habeas relief to prisoners convicted in state court" and that "[f]aithful application of those standards sometimes puts federal . . . courts of appeals in the disagreeable position of having to deny relief in cases they would have analyzed differently if they had been in the shoes of the relevant state court." *Klein v. Martin*, 607 U.S. 213, 214 (2026). Instead of accepting this directive, the majority flyspecks a state-court ruling to compel a new trial in this thirty-four-year-old murder case, holding that Jones's trial counsel rendered ineffective assistance by not further investigating a potential witness named Shiela McCray. But habeas relief is warranted only if the state court "managed to blunder so badly that every fairminded jurist would disagree" with its decision, *Mays v. Hines*, 592 U.S. 385, 392 (2021), and no such breakdown occurred here. Because the majority merely pays lip service to the AEDPA standard and fails to faithfully give the state-court decision the tremendous deference that Congress and the Supreme Court require, I respectfully dissent.

I. The Majority Fails to Properly Apply the "Doubly Deferential" Standard Required for *Strickland* Claims under AEDPA.

By design, federal habeas review under AEDPA is tightly circumscribed to only "protect[] against 'extreme malfunctions' in the state courts' adjudication of constitutional claims." *Klein*, 607 U.S. at 220 (quoting *Harrington v. Richter*, 562 U.S. 86, 102 (2011)). Under AEDPA, we must "determine what arguments or theories supported[,] or . . . *could* have supported, the state court's decision; and then [we] must ask whether it is possible fairminded jurists could disagree that those arguments are inconsistent with the holding in a prior decision of [the Supreme] Court." *Harrington*, 562 U.S. at 102 (emphasis added).

Ordinarily, to bring a claim of ineffective assistance of counsel, a defendant must show (i) his "counsel's performance was deficient," and (ii) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* at 691.

But when a petitioner brings a *Strickland* claim evaluated under AEDPA, he must meet "a substantially higher threshold" than merely establishing that "the state court's determination [of] the *Strickland* [claim] was incorrect." *Knowles v.*

Mirzayance, 556 U.S. 111, 123 (2009). "The pivotal question" for a federal court is "whether the state court's application of the *Strickland* standard was unreasonable," which "is different from asking whether defense counsel's performance fell below *Strickland*'s standard." *Harrington*, 562 U.S. at 101.

Though the majority pays lip service to the "strict standards [that] govern the grant of federal habeas relief to prisoners convicted in state court," *Klein*, 607 U.S. at 214, its application of these standards is curiously devoid of any deference, either to counsel or to the state court. *See, e.g.*, Maj. Op. at 32 ("[Jones's trial counsel] failed to provide any meaningful reason or strategy as to why he did not investigate McCray except that 'sometimes witnesses come on and say things you don't want them to say.'") (demonstrating lack of deference to counsel); *id.* at 36 ("To show prejudice in the habeas context, Jones" "simply had to demonstrate . . . that there 'is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" (quoting *Strickland*, 466 U.S. at 694)) (demonstrating lack of deference to the state court, by conducting *de novo* prejudice review). Candidly, even if we were to analyze the issue without granting AEDPA deference to the state-court ruling, Jones's claim is weak. But under a proper application of "the doubly deferential judicial review that applies

to a *Strickland* claim evaluated under the [AEDPA] standard," *Knowles*, 556 U.S. at 123, Jones's claim certainly fails.

II. A Fairminded Court Could Have Readily Concluded that Trial Counsel Did Not Provide Objectively Unreasonable Assistance.

The majority insists that all fairminded jurists would agree that the state court's decision here improperly applied *Strickland*'s first prong, which evaluates whether counsel's performance fell below "an objective standard of reasonableness." 466 U.S. at 688. Its principal argument on this point is that the state court's decision is inconsistent with the Supreme Court's opinion in *Hinton v. Alabama*. Maj. Op. at 27 (citing 571 U.S. 263, 274 (2014)). I disagree.

In *Hinton*, the Supreme Court held, on direct review of a state-postconviction judgment, that defense counsel provided objectively unreasonable assistance when he failed to look into additional sources of funding despite believing that more funding was necessary to put on an effective defense. *See* 571 U.S. at 275 ("The only inadequate assistance of counsel here was the inexcusable mistake of law—the unreasonable failure to understand the resources that state law made available to him—that caused counsel to employ an expert that *he himself* deemed inadequate."). The majority contends that Jones's lawyer made the same error here in that he (a) believed that further investigation concerning McCray

would be helpful, but (b) did not know there were funds available to pursue such an investigation. Maj. Op. at 26–28. But nothing in the record supports either contention.

For starters, the record plainly reflects that Jones's trial counsel had no need to further investigate McCray and no interest in doing so. Why? Because – as the majority acknowledges – counsel "knew about the eyewitness statements McCray had given to investigating officers within days of [the shooting]." Maj. Op. at 3. How did he come to know this? Well, Jones's lawyer had the benefit of a private investigator, who prepared a detailed report, the first five pages of which were dedicated entirely to McCray's potential testimony. *See* J. App'x at 978–82. In those five pages, the investigator documented McCray's "conflicting statements" and mentioned *four* times that McCray had seen "two" shooters. J. App'x at 978; *see id.* at 978–82. Indeed, the majority concedes that counsel had McCray's description of those shooters "from 'the very first day.'" Maj. Op. at 8 (citing J. App'x at 456).

The majority relies on counsel's recommendation that Jones hire an investigator as proof that counsel believed further investigation into McCray would have been helpful before trial. Maj. Op. at 26. But that recommendation

came *before* the investigation that culminated in the aforementioned report. *See* Sp. App'x at 9–10. The relevant inquiry here is whether Jones's counsel believed further expenditures would have been helpful *after* the investigator produced that report, since the asserted injury is counsel's failure to *continue* the investigation. Maj. Op. at 22–23 ("Jones" "asserts a failure-to-investigate claim, namely that [his trial counsel] failed to *further* investigate McCray as a potentially exculpatory witness." (emphasis added)). At that point, of course, counsel did not need more funding to investigate McCray, since by then he could have simply interviewed her himself: he knew who she was and where to find her. *See* J. App'x at 1080 (police report with McCray's address); Maj. Op. at 8–9 (conceding that counsel had access to McCray).

The majority's conclusion that Jones's counsel – like Hinton's – was unaware he could draw on public funds to further investigate McCray is similarly belied by the record. The head of the public defender service made clear (after receiving a complaint from Jones's family about the investigator's bill) that funds for investigators should come from the public fisc. *See* Suppl. J. App'x at 1037–38, 1191–92. So the record reflects that Jones's lawyer knew – well before trial – that he could draw from public funds if he believed further investigation was

necessary. *Id.* at 1038. And while the majority insists that this exchange "evinced [counsel's] lack of understanding as to *the process* by which the private investigator could receive payment from the state," Maj. Op. at 27 (emphasis added), the sole question under *Hinton* is whether counsel knew funds were *available*, and the record clearly establishes that he did.

Next, the majority's theory of the case is undermined by *Strickland* itself, which held that "the need for further investigation may be considerably diminished or eliminated altogether" "when the facts that support a certain potential line of defense are generally known to counsel." *Strickland*, 466 U.S. at 691. In other words, where, like here, a defense attorney knew what a particular witness would say and how to get ahold of her, the defendant's "allegation that [his trial counsel]'s investigation was constitutionally deficient is, at its core, indistinguishable from his allegation that [his trial counsel] should have presented evidence" at trial. *Greiner v. Wells*, 417 F.3d 305, 320 (2d Cir. 2005). And "[c]ourts applying *Strickland* are especially deferential to defense attorneys' decisions concerning which witnesses to put before the jury." *Id.* at 323. The facts above would surely permit a fairminded jurist to conclude that Jones's lawyer had

"reason to believe" retreading the same path with a *third* investigation of McCray "would be fruitless." *Strickland*, 466 U.S. at 691.

The best the majority can muster is to insist (somewhat curiously) that "the record here does not permit the inference that [Jones's trial counsel] did not investigate for reasons of strategy." Maj. Op. at 30. But the law carries a "'strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance.'" *Burt v. Titlow*, 571 U.S. 12, 23 (2013) (alteration adopted) (quoting *Strickland*, 466 U.S. at 689). We must presume competence and "affirmatively entertain the range of possible reasons [the defendant]'s counsel *may* have had for proceeding as [he] did" – even if the attorney himself "could not conjure up" any reason for his decisions. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011) (emphasis added and internal quotation marks omitted).

Here, the record contains ample support for the conclusion that Jones's counsel made a strategic choice not to focus on McCray. As the state court observed, Jones's trial counsel was "concern[ed]" "that [McCray] might provide in-court testimony that went beyond her statement and could damage the defense." *Jones v. Warden*, No. CV124004861S, 2016 WL 921751 at *8 (Conn. Super. Ct. Feb. 11, 2016), *aff'd sub nom*. *Jones v. Comm'r of Correction*, 185 Conn. App. 906,

194 A.3d 905 (2018). The private investigator also expressed concern about McCray's conflicting statements, J. App'x at 978–82, prompting Jones's counsel to seek a missing witness charge rather than roll the dice and call McCray to the stand, *id.* at 512–14. And since McCray only had a partial view of the incident, it was not unreasonable for counsel to conclude that a jury would attach little weight to her testimony were she to be called as a defense witness at trial. *See id.* at 751, 753–54 ("I [heard] the shots rang out *and all I saw was a car go back* here somewhere, [toward] one of the yards" (emphasis added)); *id.* at 789 (Question: "Did you see those two guys firing guns?" Answer: "No, I saw them taking off running after the shots.").

Under *Strickland*, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. Any of the arguments above could have supported the state court's conclusion that Jones's lawyer did so here and was therefore not constitutionally derelict for failing to further investigate McCray (or seek additional funds to do so). Our job is to "determine what arguments or theories supported[,] *or . . . could have supported*, the state court's decision[,] and then [to] ask whether it is possible fairminded jurists could disagree that *those* arguments

are inconsistent with the holding in a prior decision of [the Supreme] Court." *Harrington*, 562 U.S. at 102 (emphases added). Applying that standard here, I cannot agree with the majority's conclusion that the state court blundered when it determined that Jones failed to meet his burden under *Strickland*'s first prong.

III. A Fairminded Jurist Could Reasonably Conclude that Jones Suffered No Prejudice from His Trial Counsel's Decision to Not Further Investigate McCray.

The majority's second holding – that the state-postconviction court unreasonably applied the *Strickland* test for prejudice – is equally flawed, since it is highly unlikely that further investigation into McCray's testimony would have changed the verdict. As the Supreme Court has made clear, to show *Strickland* prejudice, "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington*, 562 U.S. at 112.

The majority insists that because "the [prosecution]'s case turned entirely on one eyewitness's testimony" and "McCray would have testified that she witnessed only two shooters" instead of three, all fairminded jurists must conclude that there is a substantial probability that the result of Jones's trial would have been different had McCray testified. Maj. Op. at 36. But, as the state court concluded, the fact that McCray only saw two shooters, as opposed to three, is by

no means incompatible with the prosecution's theory that there was a third shooter whom McCray simply did not see. *Jones*, 2016 WL 921751, at *9. After all, McCray herself acknowledged that she never saw anyone actually discharge a weapon. *See* J. App'x at 789 (Question: "Did you see those two guys firing guns?" Answer: "No, I saw them taking off running after the shots."). In other words, McCray was hardly a bombshell witness whose testimony would have upended the prosecution's theory of the case.

What's worse, McCray's statements did not even contradict the account provided by Jones's co-conspirator, Spears, at trial. In fact, her state-court testimony *corroborated* much of Spears' story, by placing one shooter on the passenger's side of the car, a key issue at trial. *Compare* Suppl. J. App'x at 1342–48, 1653 (McCray's post-trial hearing testimony marking the shooters' locations), *with* Sp. App'x at 15 (Spears's trial testimony stating he shot from the passenger's side). Moreover, to the extent McCray's testimony could have been deemed exculpatory, the prosecution would likely have responded by calling two other eyewitnesses, each of whom previously identified Jones as one of the shooters, to rebut McCray's testimony. *See* J. App'x at 907–09.

In any event, the relevant inquiry is not whether McCray's *testimony* would have altered the outcome, but whether further investigation would have. Even with the benefit of three habeas proceedings and this appeal, the majority can point to nothing that was not already before Jones's trial counsel at the time he declined to further investigate McCray as a potential witness. *See* Maj. Op. at 8 (conceding trial counsel had access to McCray's theory from "the very first day" (internal quotation marks omitted)). Had he conducted further investigation, counsel would have learned nothing new and thus would have had no reason to alter his decision to not call McCray to the stand. There is simply no indication then that "but for" counsel's lack of further investigation into McCray, "the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. I therefore cannot agree that the state court "blunder[ed] so badly that every fairminded jurist" would be compelled to find that Jones was in fact prejudiced by counsel's alleged misconduct. *Mays*, 592 U.S. at 392.

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"[AEDPA] imposes strict limits on federal courts' power to grant habeas relief to a prisoner convicted in state court." *McCarthy v. Hernandez*, 608 U.S. 809, 811 (2026). That the majority "chafe[s] under these restraints," *id.* at 811–12, is not

an excuse to disregard them. Because ample "theories supported[,] or . . . *could* have supported, the state court's decision" to deny Jones's *Strickland* challenge, *Harrington*, 562 U.S. at 102 (emphasis added), I respectfully dissent.