



Woods v. Clarke

2019 | Cited 0 times | W.D. Virginia | September 25, 2019

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FI LED SEP 2 5 221 8 JULI A . DUD - , C RK BY: ' IN THE UNITED STATES DISTRICT COURT
FOR THE W ESTERN DISTRICT OF W RGINIA

ROANOKE DIVISION LAMONT A. W OODS, CASE NO. 7:18CV00385

Peti ti oner, V. MEM ORANDUM OPINION

HAROLD W .CLARKE, By: Hon. Glen E. Conrad

Seni or Uni ted States Distri ct Judge Respondent. Peti t ioner Lnmont A. Woods, t hrough counsel , f
iled this peti ti on for a wri t of habeas cor pus, pl z r suant t o 28 U. S. C. j 2254, c hal l engi ng t he
val i di ty of hi s consnement under a 2015 Vi r gi ni a cour tj udgment convi ct i ng l l i m of s econd-
degr ee mur der. The mat t er i s pr es ent l y be fore t he court on t he respondent's moti on t o di smi
ss and Woods' response t hereto. For t he reasons set fort h bel ow, the court concl udes t hat t he
respondent's moti on t o di smi ss must be g' ranted.

1. BACKGROUND The Court of Appeal s of Vi rgini a found t he fol l owi ng facts from the evidence
present ed at ' Foods' j ury t r i al . ' l

Towar d t he end of Apr i l 2012, g Woodsl ' r el at i ons hi p wi t h hi s gi r l f r i e nd, Takea Tur ner (T1 l rner), ser i ous l y det er i orat ed. E Woods l t es t i f i ed t hat he ass umed t ha t Tl l rner and
Lnmar War d (t he vi ct i m) wer e r omant i cal l y i nvol ved. Turner and (Woods) had been l i vi ng t
oget her i n Henr y Count y t mt i l a few days be fore t he ki l l i ng. On Apr i l 27, 2012, Tur ner and
her i r t f ant s on (Baby Woods) s t ayed wi t h her f r i end, Manesha War d (l Maneshaq) , at t he
home of (Manes haq and her boyf r i e nd, Dacha Fi t zger al d (Fi t zger al d). The vi ct i m, who i s (Manes haq' s br ot her, al so s t ayed at g Manes haj' s house t hat ni ght . (Woods j t es t i fed t hat on
t hat snme ni ght , t he vi ct i m and Tur ner r epeat edl y cal l ed and t hreat ened (Woods) whi l e he
was G s hang i ng out ' ' wi t h se ver al peopl e, i ncl udi ng Kel l y Trul l (Tnz 1 1) , who cor r obora t
ed t hi s account. (Woods) al so t es t i fed t ha t Fi t zger al d and t he vi ct i m cnme t o (Woods l' s
house t o t hreat en hi m t he ni ght be fore t he s hoot i ng occur ed - and t hat (Woods j t hen r an
away f r om t hem i nt o t he woods.



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The court of appeal s s t at ed t he f act s i n t he l i g h t m o s t f a v o r a b l e t o W o o d s i n a d d r e s s i n g h i s c l a i m o f t r i a l c o m ' t e r r o r d u r i n g j u r y i n s t r u c t i o n s .

Detail s S u r r o t m d i n g t h e M t l r d e r

O n t h e m o r n i n g o f A p r i l 28, 2012 (t h e d a y o f t h e m u r d e r), T l l r n e r t e x t e d g W o o d s) s o m e m e s s a g e s t h a t h e c h a r a c t e r i z e d a s t h r e a t e n i n g . (M a n e s h a), F i t z g e r a l d , t h e v i c t i m , T u r n e r , a n d B a b y W o o d s t h e n d r o v e t o a n d a r r i v e d a t E W o o d s j ' t r a i l e r i n g M a n e s h a l ' s v e h i c l e . (M a n e s h a) d r o v e , T t m l e r s a t i n t h e f r o n t p a s s e n g e r s e a t , t h e y i c t i m s a t i n t h e l e f t r e a r p a s s e n g e r s e a t , F i t z g e r a l d s a t i n t h e r i g h t r e a r p a s s e n g e r s e a t , a n d B a b y W o o d s w a s s e a t e d o n T u r n e r ' s l a p . (W o o d s j t e s t i f i e d t h a t h e w a s t h e n w e a d n g h i s g u n h o l s t e r e d b e c a u s e h e t h o u g h t h e w o u l d b e l e a v i n g b e f o r e T u r n e r a n i v e d . T u r n e r e x i t e d t h e c a r a n d b e g a n a r g u i n g w i t h E W o o d s l . T h e v i c t i m t h e n b e g a n s p e n k i n g f r o m t h e b a c k s e a t , s a y i n g t h i n g s l i k e G t F u c k h i m ' ' a n d \$ & I f h e g o t a p r o b l e m , t h e n h e c a n d o s o m e t h i n g . ' ' (W o o d s j t e s t i f i e d t h a t i t w a s a t t h i s p o i n t t h a t h e r e a l i z e d t h e v i c t i m w a s a c t u a l l y i n t h e c a r -

a n d t h a t t h e y b e g a n a r g u i n g .

(W o o d s) t h e n p r o v i d e d h i s a c c o u n t o f w h a t h a p p e n e d n e x t , s t a t i n g , G t s o a s w e a r e a r g u i n g , I a m w a l k i n g t o w a r d s t h e c a r . S o w h e n I w a l k e d t o w a r d s t h e c a r , y e a , I w a s t e l l i n g h i m t o g e t o u t t h e c a r I f h e h a d a p r o b l e m w i t h m e , t h e n I w a s w i l l i n g t o f i g h t i t o u t a n d g e t i t o v e r w i t h . ' ' (W o o d s q s a i d t h a t h i s i n t e n t i o n w a s o n l y t o e n g a g e i n a f s t f i g h t . E G S O a s I ' m g e t t i n g c l o s e r t o t h e c a r , t h a t ' s w h e n h e p u l l s h i s g t m o u t . ' ' (W o o d s q s a i d o f t h e v i c t i m , & I H e b a s i c a l l y j u s t f l a s h e d (h i s g u n l o u t o f t h e w i n d o w . H e w a s s t i l l i n t h e c a r a t t h e t i m e . ' ' (W o o d s j t e s t i f i e d t h a t a f t e r t h e v i c t i m f l a s h e d t h e g t m w i t h h i s r i g h t h a n d , I G S O t h a t ' s w h e n I k i n d o f s l i d b e h i n d t h e t ' r e e a n d I k i n d o f a s k e d h i m t o l e a v e ' ' g W o o d s) f u r t h e r t e s t i f i e d t h a t h e h e r d c a r d o o r s o p e n i n g a n d s h u t t i n g , a n d h e h e a r d t h e v i c t i m s a y s o m e t h i n g t h r e a t e n i n g a n d t e l l (W o o d s) t o c o m e o u t f r o m b e h i n d t h e t r e e . ç G s o a s I c o m e b e h i n d t h e t r e e : a t t h i s t i m e , I h a d p u l l e d m y g t m o u t o f m y h o l s t e r , s o a s I c o m e b e l z i n d t h e t r e e , h e h a d h i s g u n k i n d o f l i k e , i t w a s u p b y h i s s i d e . H e w a s s t a n d i n g o u t s i d e o f t h e c a r , b u t h e w a s s t i l l i n t h e d o o r w a y , k i n d ' m ' ' C o t m s e l a s k e d (W o o d s) , (G S O h e w a s i n b e t w e e n t h e d o o r a n d w h e r e i t w a s o p e n ? ' ' (W o o d s) r e s p o n d e d , E t l t i g h t . S o a s I c o m e b e h i n d t h e t ' r e e , . . . h e r a i s e s h i s g t m , a n d t h a t ' s w h e n I j u s t s t a r t e d s h o o t i n g , r u n n i n g t o w a r d s t h e w o o d s . ' '

W h e n a s k e d w h e t h e r h e s h o t a t t h e v i c t i m t e n t i m e s , g W o o d s l r e s p o n d e d , G i M a y b e . I ' m n o t s u r e . I f e a r e d f o r m y l i f e , s o I j u s t w a s n ' t c o u n t i n g . I w a s n ' t r e a l l y a i m i n g . I j u s t d i r e c t e d t h e g u n i n h i s d i r e c t i o n a n d I w o n ' t g s i c l r e a l l y t r y i n g t o p u r p o s e f u l l y k i l l l i m o r n o t h i n g l i k e t h a t . I w a s j u s t t r y i n g t o g e t o u t o f t h e r e . ' ' (W o o d s l a d m i t t e d t h a t n o o n e e l s e f r e d a s h o t , a n d d i d n o t d i s p u t e t h a t e v e r y s h o t h e f i r e d l l i t t h e v i c t i m . (W o o d s j t e s t i f i e d t h a t h e w a s a f r a i d o f t h e v i c t i m G ç b e c a u s e o f h i s r e p u t a t i o n a n d t h e t k e a t s t h a t h e m a d e o v e r t h e p h o n e . ' ' H e k n e w t h a t t h e v i c t i m t o o k a g t m F i t h h i m e v e r y w h e r e h e w e n t . (W o o d s q d i d



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not dis put e t hat he s hot t hrough t he car' s back wi nds hi el d. Fi t zgeral d t es t i fed t hat he saw E Woods j shooti ng the vi cti m through t he rear wi ndow of t he car. Fi tzgeral d al so testi fied t hat he exi t ed t he car and r an t o t he woods when g Woods j began s hoot i ng t he vi cti m.

2

Soon aft er t he shoot i ng, (Maneshaq cal l ed 9-1- 1, i nf or mi ng t hem t hat her brot her had been shot and was not breathi ng. The phone call then suddenl y termi nat ed on t he cal ler's end. Al fred Lemons, an eyewi tness to the subsequent car acci dent , t est i fi ed t hat he obs erved a car (l at er det er mi ned t o be E Manes hal' s vehi cl e) dr i ve by hi m, s ki d of f t he r oad, and hi t a t r ee. (Manes ha), Tumer, Baby Woods, and the vict i m' s body were thrown from the vell icle, kil li ng a11 of the li vi ng passengers. Uncontroverted Physi cal Evi dence

Assistant Cl l i ef Medical Exnmi ner Gayle Suzuki testi fied that the vi cti m's cause of deat h was mul ti ple gt mshot wounds. The vict i m recei ved ten gunshot wot mds - three of which were lethal . A1 1 t hree let hal gt mshot wounds were cons i s t ent wi t h bei ng s hot i n t he back. I n f act , (Woods q hi ms el f acknowl edged t hat over hal f of t he shots fired were fi red f ' rom bel li nd the vict i m. Dr. Stl zuki t es t i sed t hat t he super fi ci al i nj t l r i es t he vi ct i m r ecei ved i n t he car cr ash were sustai ned post-mort em.

Wendy Gi bson - a forensic scient ist wi t h t he Depart ment of Forensic Sci ence and an expert i n i denti t kati on of f irearms and tool marks - t esti fied, û rt l ri ng the course of t his anal ysis, l was able to ident i fy that all ten of t hese cart ri dge cas es (f ol md at t he scene) had been f i red i n one f i r earm. ' ' Al 1 t en cart ri dge cases were t he same brand and cal i ber. Furt her, each of t he fi ve bul lets recovered f ' rom the vict im' s body was consistent i n design wi t h the brand and cal i ber of the ten cart ri dge cases and was s red from one fi rearm. Woods v. Commonweal t h, 782 S. E. 2d 613, 615-16 (Va. Ct . App. 2016). 2

On May 21, 2012, a gr andjury i n t he Ci r cui t Cout ' t of Henry Count y r et umed i ndi ct ment s chargi ng Lnmont M t hony Woods wi t h fi rst-degree murder, grand l arceny of a firearm, use of a fi reann i n the commi ssi on of a felony, mal ici ousl y shooti ng i nto an occupied vehicle, and endangeri ng the li fe of a chi l d.Woods pl eaded not gui l ty to t he f i rst four charges and proceeded t o a j ur y t r i al . The court grant ed Woods' r eques t f or a j ur y i ns t nz ct i on f or t he l esse r i ncl uded offense of second-degree mtl rder and for sel f-defense. The court found that t he evidence di d not support an i nst nl cti on for the l esser i ncl uded offense of vol untary manslaughter, however.

2 ç d ln rev i ewi ng a habeas pet i t i on

, f eder al court s must presume t he cor rect ness of a st at e court ' s f acmal det ermi nati ons unl ess t he habeas pet i t i oner rebut s t he pr esumpt i on of cor r ecme s by cl ear and convi nci ng evi dence. ' ' Gr een v. Johnson, 515 F. 3d 290, 299 (4t h Ci r. 2008).



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The jury found Woods guilty of second-degree murder, use of a firearm in the commission of a felony, and maliciously shooting into an occupied vehicle, but acquitted him of grand larceny. The jury set Woods' pretrial sentence at twelve years in prison for the murder conviction, three years and five years on other convictions, for a total of twenty years. By order dated January 14, 2015, the circuit court imposed the sentences fixed by the jury. The circuit court also sentenced Woods that day for the child endangerment charge, to which Woods had pleaded no contest.

Woods appealed his second-degree murder conviction, arguing that the trial court erred in denying a jury instruction for voluntary manslaughter. In a published opinion, the Court of Appeals of Virginia affirmed Woods' conviction. *Woods v. Commonwealth*, 782 S. E. 2d 613, 615 (Va. Ct. App. 2016). The Supreme Court of Virginia refused his subsequent petition for appeal in that court in a summary order.

Woods then filed a petition for a writ of habeas corpus in the Supreme Court of Virginia. The Court construed the petition as raising these two claims: (1) trial counsel provided ineffective assistance by failing to investigate and obtain witnesses and cell phone evidence to bolster Woods' trial testimony that he shot the victim out of fear for his life rather than out of malice, and (2) the Commonwealth withheld exculpatory evidence likely contained on one or more cell phones likely recovered from the scene of the fatal car crash that occurred after the shooting. The Supreme Court of Virginia denied relief on both claims. Mem. Supp. Mot. Dism. Ex. 16, ECF No. 7-16.

Woods' federal habeas corpus petition itself raises these overlapping claims for relief, as paraphrased by the court:

(A) Woods' guilty plea was not voluntary and intelligent, because his trial

counsel provided incompetent advice and conducted an inadequate pretrial investigation to support Woods' testimony;

3 Woods did not appeal his other convictions.

(B) Trial counsel provided ineffective assistance by failing to prepare and

properly establish Woods' state of mind at the time of the shooting as being in fear of his own life'; (C) Trial counsel provided ineffective assistance by failing to properly

impeach the Commonwealth's main witness, Dacha Fitzgerald; and (D) The Commonwealth withheld exculpatory evidence by not disclosing the



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information about the victim's cell phone text messages in violation of Brady v. Maryland, 373 U. S. 83 (1963). Pet. 6-7, ECF No. 1. Woods' memorandum in support of his petition, ECF No. 1-1, however, discusses only the two habeas claims addressed by the Supreme Court of Virginia in state habeas proceedings. As relief, Woods asks the court to grant his convictions. ' ' Mem. Supp. Pet. 23, ECF No. 1-1. The respondent has filed a motion to dismiss, and Woods has responded, making the matter ripe for disposition.

11. DISCUSSION A. Procedural Default & (A federal court may not grant a writ of habeas corpus to a petitioner in state custody unless the petitioner has first exhausted his state remedies by presenting his claims to the highest state court. ' ' Baker v. Corcoran, 220 F. 3d 276, 288 (4th Cir. 2000) (citing 28 U. S. C. § 2254(a)); O'Sullivan v. Boerckel, 526 U. S. 838, 842 (1999)). The exhaustion requirement in § 2254(a) requires a federal habeas petitioner to provide the state courts with a full and fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. It is not enough that all the facts necessary to support the federal claim were before the state courts, or that a somewhat similar state-law claim was made. In addition, the habeas petitioner must have ' ' fully presented' ' to the state courts the ' ' substance' ' of his federal habeas corpus claim. Anderson v. Harless, 459 U. S. 4, 6 (1982). 4

requires a federal habeas petitioner to provide the state courts with a full and fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. It is not enough that all the facts necessary to support the federal claim were before the state courts, or that a somewhat similar state-law claim was made. In addition, the habeas petitioner must have ' ' fully presented' ' to the state courts the ' ' substance' ' of his federal habeas corpus claim. Anderson v. Harless, 459 U. S. 4, 6 (1982). 4

4 The court has omitted internal quotations, alterations, and citations here and throughout this memorandum opinion, unless otherwise noted.

5

Even where the petitioner has completed his direct appeals and habeas remedies in the state courts, federal review of his § 2254 claims may be procedurally barred. If a state court expressly bases its dismissal of a claim on the petitioner's default of a state procedural rule, and that procedural rule provides an independent and adequate ground for the dismissal, the federal habeas verison of that claim is also procedurally barred. Beard v. Pruett, 134 F. 3d 615, 619 (4th Cir. 1998). Similarly, if the petitioner has not presented a claim or part of a claim to the state courts, but would clearly be barred by an independent and adequate state procedural rule from having that claim adjudicated now if he returned to state court, the claim is procedurally barred from federal habeas review. Basset v. Thompson, 915 F. 2d 932, 936 (4th Cir. 1990) (citing Teague v. Lane, 489 U. S. 288 (1989)). A federal habeas court may review the merits of a procedurally defaulted claim only if the petitioner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice. ' ' Coleman v. Thompson, 501 U. S. 722, 750 (1991), holding modified p

.quot her grounds by Martinez v. Ryan, 566 U. S. 1 (2012). The respondent argues that Woods' Cl



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aim (A), challenging the validity of his guilty plea to the charge of endangering a child, and Claim (C), alleging cotmsel's failure to properly impeach a witness, are t
mexhausted and procedurally barred from federal habeas review. s Records from the Supreme
Court of Virginia reflect that Woods' state habeas petition did not include any claim that his
guilty plea to the child endangerment charge was invalid. That petition also did not complain
about trial counsel's advice regarding the plea or about cotmsel's alleged failure to effectively
impeach Fitzgerald. Thus, the court concludes that Woods failed to give the state

5 The respondent concedes that Claim (B) is both exhausted and not procedurally defaulted,
because Woods presented it to the Supreme Court of Virginia on direct appeal.

habeas court an opportunity to address the substance of these claims before filing its federal
petition. Therefore, he did not exhaust his state court remedies as to Claims (A) and (C) as
required under j 225409.

Woods would now be precluded from presenting these claims in state court. Va. Code Ann. j 8.
01- 654(A) (2) , - 654(B) (2) . These Virginia Code sections, setting the state of limitations
for bringing a state habeas claim, and requiring a habeas petitioner to bring in his first peti
tion all allegations known to him at that time, are both adequate and independent state pr
ocedural rules. Bassett, 915 F. 2d at 937 (regarding j 8. 01- 654(B) (2)); Sparrow v. Dir. . Dep' t
of Corr s. , 439 F. Supp. 2d 584, 587- 88 (E. D. Va. 2006) (regarding j 8. 01- 654(A) (2)) . Accordi
ngly, the court concludes that Claims (A) and (C) are procedurally barred from federal review
absent a showing of cause and prejudice, or a miscarriage of justice. 6 Bassett, 915 F. 2d at
936. Woods does not attempt to show cause for his default of these claims.

The respondent also contends that although Woods presented Claim (D) to the state court
s, it is procedurally defaulted. In the state habeas proceedings, the Supreme Court of Virginia
simplified this claim as follows'.

(Woods's peculiar state police must have recovered one or more cell phones used by Turner,
Ward, and Ward's sister, Manesha, and he further speculates one of these phones might have
been the one Ward and Turner used to send him the threatening text messages . g Woods) bases his
peculiar opinion on evidence that, after (he) shot Ward, Manesha sped away from the scene i
n her car with Turner , Turner's baby, and Ward's body. Moments later, Manesha, Turner, and t
he baby were all killed in a crash. The police investigated the scene of the fatal crash. (
Woods's alleged records of the text messages from Ward's phone would have been exculpat
ory because they would have shown (Woods') state of mind when he shot Ward.

6 Woods asserts in his pleadings that he has exhausted his state court remedies. He offers
no evidence, however, to contradict the Supreme Court of Virginia records that reflect ot
herwise. The court also notes that in Woods' j 2254 petition, he merely lists Claims (A) and (



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C) in the form petition, without presenting any factual support for them. Accordingly, he has not demonstrated any entitlement to relief on these grounds, even absent his procedural default.

Mem. Supp. Mot. Dism. Ex. 16, at 2, ECF No. 7-16. The Court found that the claim was procedurally defaulted under the rule in *Slayton v. Parrish*, 205 S. E. 2d 680, 682 (Va. 1974), stating that because this non-jurisdictional issue could have been raised at trial and on direct appeal . . . , (it) is not cognizable in a petition for a writ of habeas corpus. ' ' *Id.* *Slayton* is an independent and adequate state procedural bar. *Butler v. Angelone*, 208 F. 3d 172, 191 (4th Cir. 2000). Accordingly, the court concludes that Claim (D) is procedurally barred from federal review absent a showing of cause and prejudice, or a miscarriage of justice.

To establish C G cause, ' ' the petitioner must show that some objective fact or external to the defense impeded (its) efforts to comply with the State's procedural rule. A factor is external . . . if it cannot fairly be attributed to the prisoner. ' ' *Davis v. Davis*, U. S. , 137 S. Ct. 2058, 2065 (2017).

Woods contends that ineffective assistance of counsel during pretrial preparation regarding the cell phone evidence, as alleged in Claim (B), caused the default of the Brady claim in Claim (D). *See* *Altorney* or it is an objective external factor providing cause for excusing a procedural default only if that error amounted to a deprivation of the constitutional right to counsel. ' ' *Id.* As heretofore discussed in addressing Woods' Claim (B) on its merits, Woods has not established that counsel's representation rose to the level of a constitutional violation. Therefore, the court also concludes that Woods has failed to show cause for default of Claim (D). ?

1. In addition

, Claim (D) is meritless. To succeed on a Brady claim, the defendant must establish that (1) the evidence was (1) favorable to the accused, (2) suppressed by the government, and (3) material to the verdict at trial. ' ' *Nicholas v. Attorney General of Maryland*, 820 F. 3d 124, 129 (4th Cir. 2016). Woods' bald assertion that the Commonwealth likely obtained the text messages from Ward's cell phone cannot establish a Brady violation. *United States v. Yotma*, 916 F. 3d 368, 383 (4th Cir. 2019) (holding that defendant had offered nothing but rank speculation as to the nature of the allegedly suppressed materials, which cannot establish a Brady violation); *United States v. Stokes*, 261 F. 3d 496, 502 (4th Cir. 2001) (noting that to prove a Brady violation, the defendant must show that the retroactive prosecution had the (purportedly withheld materials) and failed to disclose them').

Woods' conclusory allegations about the suppression of cell phone evidence are also insufficient to warrant an evidentiary hearing in this court. *Nichols v. Lee*, 971 F. 2d 1125, 1136 (4th



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h Ci r. 1992) (r ecogni zi ng t hat Rt o obt ai n an evi dent i ar y hear i ng . . . on any cl ai ml ,) a habeas pet i t i oner mus t come f omard wi t h s ome evi dence t hat t he

W oods also assert s that his procedtl ral defaul ts shoul d be excused t mder t he miscarri age of j us t i ce except i on, bas ed on cot msel ' s al l egedl y i nadequat e i nvest i ga t i on of t he cel l phone evi dence as al l eged i n Cl ai m (B) . See Pet . Opp' n 3, ECF No. 1 1. The mi s caniage of j ust i ce except i on t o def aul t r equi res a col ora bl e s howi ng t ha t based on new evi dence not pr esent ed at t r i al , & E a consti mti onal vi olat ion has probabl y resul t ed i n the convict ion of one who i s acmall y i nnocent. ' ' Mun' av v. Canie r, 477 U. S. 478, 496 (1986); Schl up v. Del o, 513 U. S. 298, 327 (1995) (hol di ng t hat actt zal i nnocence contenti on to open a G l gateway' ' t hrough procedural defaul t requi res showi ng t hat I i i t i s mor e l i kel y t han not t hat no reasonabl e j t l r or woul d have convi ded hi m i n t he l i ght of t he new evi dence').

Woods apparentl y cont ends that i n l i ght of t he cel l phone evidence not i ntroduced at tri al , no r easonabl e j t l r or woul d have convi ct ed hi m of second- degr ee mt l r der, and woul d have opt ed i nst ead to convict hi m of vol untary manslaughter or to acquit hi m on sel f-defense grounds. Thi s argument i s forecl osed by the court ' s concl usi on that W oods has not establi shed i neffect i ve as si st ance as al l eged i n Cl ai m (B) . To pr ove t hat counsel ' s r epr esent a t i on was so defect i ve as t o requi re reyersal of a convi cti on, t he peti t i oner must meet a two- pronged standard, showi ng t hat , cot msel ' s t mr easonabl y def i ci ent pe rf or mance r es ul t ed i n pr e j udi ce. St r i ckl and v. Was hi ngt on, 466 U. S. 668, 687 (1984). To meet t he St r i ckl and pr e judi ce requi rement , t he pet i t i oner mus t demonst rate that but for counsel' s unprofessional errors, there i s a reasonabl e probabili ty t hat t he out come at t ' r i al woul d have been di f f er ent . l (. l a at 694. The cour t her ei n det er mi nes t ha t Woods fai l s t o s how pr e j udi ce under t he r easonabl e probabi l i ty s t andard of St r i ckl and, Because t he

cl ai m mi ght have meri t. Unsupport ed, concl us ory al l egat i ons do not ent i t l e a peti t i oner t o an evi dent i ar y hear i ngn) , abr oc' n p . q ot her rounds recoc' d, Yeatt s v. Al mel one, 166 F. 3d 255 (4t h Ci r. 1999) . Mor eover t he record does not 2 ref l ect t hat Woods moved i n t he s tat e court habeas pr oceedi ng for fact ual devel opment of t hi s cl al m. Juni per v. Zook, 876 F. 3d 551, 564 (4t h Ci r. 2017) (hol di ng t hat t o warr ant evi dent i ar y heari ng on j 2254 cl ai m, Rl alt a mi ni mum, a di l i gent pet i t i oner must seek an evi dent l ar y heari ng i n s t at e court i n t he manner pr escri bed by s t ate l aw' ').

G û requi si te probabili ty' ' for t he actual i nnocence gateway requi res G E a st ronger showi ng than that needed t o est abl i s h pr e j udi ce' ' under St r i ckl and, Woods has not opened t ha t gat eway. Schl up, 513 U. S. at 327.

For t he stated reasons, the court concl udes that Woods has procedt l ral ly defaul ted Clai ms (A) , (C) , and (D) and fai l s t o s how caus e and pr e j udi ce f or t hose defaul t s or act t l al i nnocence. Therefore, t he court wil l grant t he moti on ' to di smiss as t o t hese cl aims .



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B. The Federal Habeas Review Standard Under 28 U. S. C. § 2254(*), the federal habeas court may not grant a writ of habeas corpus based on any claim that a state court decided on the merits toml es s t hat adj udi cat i on:

Resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) Resulted in a decision that was based on an unreasonable determination of

the facts in light of the evidence presented in the State court proceeding. 28 U. S. C. § 2254(*); see also *Williams v. Taylor*, 529 U. S. 362, 403-13 (2000). If the state court's application of governing federal law is challenged, it must be shown to be not only erroneous, but objectively unreasonable. *Yarborough v. Gentley*, 540 U. S. 1, 5 (2003). Under this standard, : \$ (a) state court's determination that a claim lacks merit precludes federal habeas relief so long as fair-minded jurists could disagree on the correctness of the state court's decision. *Harrington v. Richter*, 562 U. S. 86, 101 (2011).

Because the Court of Appeals of Virginia adjudicated Woods' Claim (B) on the merits in habeas proceedings, this court must apply the deferential standard of review mandated by § 2254(*). The court of appeal's decision affirming Woods' conviction is the last reasoned state court opinion', thus, this court must look through the Supreme Court of Virginia's refusal order and reviews the reasoning of the court of appeals. *Wilson v. Sellers*, 138 S. Ct. 1188, 1193 (2018) 9

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Yist v. Nlmmemaker, 501 U. S. 797, 803 (1991) (holding that federal habeas court must presume that the lower state court has been one reasoned state judgment rejecting a federal claim, later unexplained orders uphold that judgment or reject the same claim rest upon the same round') g.

C. Ineffective Assistance of Counsel. In addressing Woods' Claim (B), the court must apply the two-part Strickland standard: deficient performance and resulting prejudice. 466 U. S. at 687. First, the petitioner must show that the counsel's representation at trial fell below an objective standard of reasonableness, 'considering circumstances and facts known to counsel at that time. *Id.* at 687-88. This is showing 'requires evidence that counsel's errors were so serious that he was not fulfilling his role in the adversarial process envisioned by the Sixth Amendment's fair trial guarantee. *Id.* The petitioner must overcome a strong presumption that counsel's performance was within the range of competence demanded from attorneys defending criminal cases. *Id.* at 689.

Second, the petitioner must demonstrate a reasonable probability that, but for counsel's



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professional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. ' ' Id. at 694. Gil is not enough to show that errors had some conceivable effect on the outcome of the proceeding. ' ' Harri naton, 562 U. S. at 104. If the petitioner fails to satisfy either prong, his claim fails without need for further inquiry. Id- at 697.

The Court of Appeals of Virginia meticulously analyzed Wood's Claim (B) as follows: g Woods contends he was denied the effective assistance of counsel because counsel failed to conduct a reasonable investigation. (Woods alleges counsel failed to interview witnesses or to obtain evidence relating to phone calls and text messages exchanged between g Woodsj , the victim, Lnmarr Ward, and g Woods' estranged girlfriend, Takea Turner , shortly before the offenses. (Woods contends that had counsel obtained Ward's cell phone records, they would have supported

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(Woods' testimony that he received threatening calls and texts from Ward and Turner shortly before the shooting and that he was in fear for his life when he shot and killed g Wardq , thus negating the Commonwealth's evidence of malice. (Woods alleges Turner and Ward sent him multiple text messages that t G included imminent threats to my life and person' ' the day before and the day of the shooting.

The Court holds (this claim is at issue neither the ' G performance' ' nor the G G prejudice' ' prong (under Strickland). E Woods) fails to identify the witnesses counsel should have interviewed or to articulate what useful information any interview would have yielded. Similarly, (Woods) fails to offer the text messages he contends counsel should have obtained, nor has he described the content of the messages, save to say that they included threats. Further, the record, including the trial transcript and the affidavit of counsel , demonstrates g Woods j admitted at trial that he did not save the text messages, despite claiming they caused him to fear Ward. In addition, E Woods' q counsel aver s t that he discussed the text messages with g Woods j , ml d (Woods j G t was concerned that some of the texts could come off as aggressive on his part and counter to overall self-defense defense. ' ' Due to that concern and that several witnesses confirmed (Woods) and Ward had been texting V a heated fashion, ' ' r Woods j and counsel agreed to avoid procuring the specific messages. (Woods l has not contradicted counsel ' s explanation for why he did not produce the text messages. Accordingly, (Woods j has failed to adequately substantiate his allegation that the text messages would have aided his defense or to show that counsel acted unreasonably in deciding not to produce the messages. Thus, (Woods j has failed to demonstrate that counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different. Mem. Supp. Mot. Dismiss. Ex. 16, at 1-2, ECF No. 7-16.



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The court agrees that Woods has failed to demonstrate an objectively unreasonable performance by counsel. At the most, Woods claims that Wm'd, via text messages, made imminent threats to Woods' life. Without a particularized description of the evidence counsel failed to obtain, the court cannot assess either counsel's alleged deficiency in failing to obtain it or the likelihood that prejudice resulted from that omission. *Beaver v. Thompson*, 93 F.3d 1186, 1195 (4th Cir. 1996) (holding that failure to proffer what favorable evidence or testimony counsel should have produced is fatal to allegation of inadequate investigation).

In addition, court records reflect that Woods' counsel filed a discovery motion that included a demand for all Brady material, which would have encompassed any exculpatory cell

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phone content, had the Commonwealth procured any. Woods complains that the prosecution made effective use of the defense's lack of direct cell phone evidence, including the content of the text messages, to undercut Woods' credibility when he introduced no cell phone evidence of his own. Woods, not his counsel, deleted the text messages from Woods' own cell phone, however. Because other witnesses' testimony bolstered Woods' account of receiving heated text messages from Ward, cell phone calling records alone would have been merely cumulative evidence. The court concludes that Woods simply has not stated evidence sufficient to overcome the presumption that his counsel's strategic decisions with regard to the cell phone evidence fell within the scope of reasonable professional performance. *Yarborough*, 540 U.S. at 8 (the Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.); *Shalakh v. Johnson*, No. 1:08CV1286, 2010 WL 2039016, at *9 (E.D. Va. May 20, 2010) (finding that petitioner failed to overcome presumption that counsel made "sound tactical decision" where unproduced evidence "represented a two-edged sword that counsel often confront when considering the strategy most likely to assist rather than harm a client").

The court also agrees that Woods has not established prejudice under Strickland, resulting from counsel's failure to procure the cell phone data or text message content. Woods contends that with the cell phone evidence, he might have persuaded the judge to give a voluntary manslaughter instruction or the jury might have acquitted him of the murder charge upon finding that he acted in self-defense. To meet his burden on prejudice, Woods must show that the exculpatory value of the cell phone evidence, evaluated relative to inculpatory value of prosecution's evidence, was "sufficiently large" to place the whole case in such a different light.

Woods provides this court with evidence that many cell phone service providers do not retain the content of text messages, and those that do retain content, do so for no more than a month. Woods has not demonstrated that counsel was appointed and apprised of the important



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ance of the text message content in time to have subpoenaed text message content from service providers, as Woods alleges that he should have done.

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as to undermine confidence in the verdict. *Strickland*, 466 U. S. at 696. Woods has not carried this burden.

Second-degree murder, of which the jury found Woods guilty, is a malicious killing. ' Woods, 782 S. E. 2d at 617. To be malicious, the criminal act must be done willfully or purposefully. ' Id. Malice is evidenced either when the accused acted with a sedate, deliberate mind, and formed design, or committed any purposeful and cruel act without any or without great provocation. ' J #a

Voluntary manslaughter is the unlawful killing of another, committed in the course of a sudden quarrel, or mutual combat, or upon a sudden provocation, and without any previous grudge, and the killing is from the sudden heat of passion growing solely out of the quarrel, or combat, or provocation. . . . It excludes malice when provocation reasonably produces fear or anger that causes one to act on impulse without conscious reflection. J - 4. By contrast, when making a plea of self-defense,

a defendant implicitly admits the killing was intentional and assumes the burden of introducing evidence of justification or excuse that raises a reasonable doubt in the minds of the jurors. The bare fear of serious bodily injury, or even death, however well-grounded, will not justify the taking of human life. There must also be some overt act indicative of imminent danger at the time. ' *Commonwealth v. Carv*, 623 S. E. 2d 906, 912 (Va. 2006).

In Woods' case, the evidence of malice was overwhelming. By his own testimony, after receiving the text messages, knowing that Ward always carried his gun with him, Woods took a loaded gun, approached Ward's car, and demanded that Ward get out and fight him. Moreover, the physical evidence showed that Woods fired ten rounds at Ward from beside and behind the car; each round struck the victim. Ward was shot five times in the back and once in the back of the arm. On this evidence, the court of appeals found that Woods testified great care in aiming at (Ward) and shooting him, which contradicts (Woods' theory that all his reason was overcome by fear. ' Woods, 782 S. E. 2d at 618. Even if the text messages included direct threats that Ward

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intended to shoot Woods dead on sight, the bare fear generated by those words did not justify Woods' infliction of ten rounds of deadly force in self-defense, more than half of them fired from behind the victim. The text messages also could not have refuted the reasonable conclusion t



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hat Woods provoked the confrontation with Ward and then G will fully and purposefully shot the victim with a deliberate mind' in a malicious G barrage of gunfire.' ' 1d. at 618-19.

For the stated reasons, the court cannot find that Woods has met his burden under Strickland to show either deficient performance or prejudice. Accordingly, the court concludes, pursuant to § 2254(*), that the state court's adjudication of Woods' Claim (B) was not contrary to, or an independent application of federal law and was not based on an unreasonable determination of the facts in light of the evidence presented. The court will grant the motion to dismiss as to (Zlairn (13)).

111. CONCLUSION After careful review of the petition, the motion to dismiss, and pertinent parts of the state court records and decisions, the court concludes that the respondent's motion to dismiss must be granted. An appropriate order will issue this day

. ENTER: This 45 day of September

, 2019.

Senior United States District Judge

9 Because the court has found that Woods' claims must be dismissed as procedurally defaulted or without merit under § 2254(*), the court does not find it necessary to address the respondent's alternative time-bar defense as to some of the claims.