PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6636

CAMERON PAUL CROCKETT,

Petitioner - Appellant,

v.

HAROLD W. CLARKE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:18-cv-00139-MHL-RCY)

Argued: March 8, 2022 Decided: May 24, 2022

Before WILKINSON, NIEMEYER and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Quattlebaum wrote the opinion, in which Judge Wilkinson and Judge Niemeyer joined.

ARGUED: Lauren Elizabeth Bateman, GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Appellant. Victoria Lee Johnson, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee. **ON BRIEF:** Erica Hashimoto, Director, Nicolas Sansone, Supervising Attorney, Hassan Ahmad, Student Counsel, Meredith Manuel, Student Counsel, Appellate Litigation Program, GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Appellant. Mark R. Herring, Attorney General, K. Scott Miles, Deputy Attorney General, Donald E. Jeffrey, III, Senior Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

QUATTLEBAUM, Circuit Judge:

A Virginia jury convicted Cameron Crockett of involuntary manslaughter after his car crashed into a tree killing the front seat passenger. To reach this result, the jury concluded that Crockett was driving under the influence at the time of the crash. Crockett subsequently sought post-conviction relief in Virginia state court, claiming ineffective assistance of counsel. Crockett, who insisted he was not wearing a seatbelt at the time of the accident, asserted that his lawyer failed to investigate evidence of the operation and use of the driver's seatbelt. He claimed that a proper investigation would have revealed the driver's seatbelt was used at the time of the accident, meaning he could not have been the driver. The Virginia courts disagreed. Ultimately, the Supreme Court of Virginia, after considering the full record, held that, although the counsel's performance fell below the standard of care, that failure did not prejudice Crockett.

In response, Crockett brought a federal habeas petition under 28 U.S.C. § 2254 making essentially the same arguments. In doing so, he confronts an extraordinary standard of review. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") precludes a federal court from granting habeas relief on a claim decided on the merits in a state court unless it determines the state court's decision was 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 record evidence. That standard of review proves fatal to Crockett's habeas claims. While one might reasonably come to a different conclusion than the Supreme Court of Virginia, the court's decision was far from

unreasonable. Accordingly, we affirm the district court's denial of Crockett's § 2254 petition.

I.

A. *The Accident*

Late on the night of December 28, 2008, Crockett's 1998 Honda Accord two-door coupe crashed into a tree after accelerating down Wolfsnare Road in Virginia Beach, Virginia. One person walking on Wolfsnare Road witnessed the crash. Several neighbors heard sounds from the impending accident, notified the police and rushed to the accident scene. Officers arrived within minutes. They found Crockett's best friend, Jack Korte, dead in the front passenger seat area. They found Crockett unconscious, with his upper body in the backseat area, while his legs and feet were in the front of the car over a collapsed front seat. No one remembered Crockett wearing a seatbelt. No one saw anyone else in the car or observed anyone leaving the scene. Crockett was intoxicated.

B. *The Trial*

The Commonwealth of Virginia charged Crockett with involuntary manslaughter.[1] At trial, Crockett claimed he was not the driver. Instead, he maintained that another friend, Jacob Palmer, was driving when the car crashed. Crockett said he and Korte were together earlier that night drinking. They met up with Palmer at a party at an apartment some two or so miles from the accident site. At the party, all three made plans to smoke marijuana,

[1] The Commonwealth initially charged Crockett with aggravated involuntary manslaughter. A jury found him not guilty of aggravated involuntary manslaughter but guilty of a lesser included offense. However, after the jury could not agree on a sentence, the court declared a mistrial. We thus focus on Crockett's second trial.

but they did not have any cigarette rolling papers which are commonly associated with the use of marijuana. So, they decided to go to a store to buy some. Crockett insisted he knew that he was too drunk to drive, so he gave his keys to Palmer. Crockett said he sat in the back seat and let Korte take the front seat because Korte was "[a] bit taller." J.A. 736, 762. He also said he let one of his friends—he could not remember which one—borrow one of his jackets from the car.

Consistent with Crockett's version of the events, one of the party hosts testified that Palmer asked him if he needed anything from the store. After that, the host said he did not see Crockett, Palmer or Korte for about an hour. Another party guest said she recalled that Palmer disappeared for a period of time but remembered him coming back later. The guest said Palmer was breathing heavily and asking if anyone had heard from Crockett and Korte.

Crockett also relied on evidence from the first responders and witnesses. Police officers found and photographed Crockett's jacket on the ground behind the car at the accident scene. The officers also noted in their police report that Crockett was the front seat driver. And, although witnesses and officers testified that they did not see him wearing a seatbelt or recall him to have been wearing a seatbelt, the report indicated he was belted. But the officers and the emergency medical personnel testified that Crockett did not exhibit signs of injuries from either a seatbelt or an airbag. Finally, the officers and witnesses found the driver's side window open—either rolled down or broken— providing, according to Crockett, a way for Palmer to exit the car.

In summary, Crockett attempted to establish reasonable doubt by maintaining that Palmer was driving and wearing a seatbelt, undermining witnesses' testimony who placed

Crockett's body closer to the driver's seat in terms of orientation, questioning police efforts to analyze the driver's side of the vehicle for blood and DNA and showing that Crockett was sitting unbelted in the backseat.

In contrast, the Commonwealth focused on the fact that only Crockett and Korte were found at the scene. It also emphasized that, although witnesses and police arrived at the scene within minutes, no one saw anyone around the vehicle or fleeing the area. Finally, the Commonwealth pointed out that after the crash, the car was wrapped around a tree and severely damaged. The airbags deployed and the front seat collapsed. And Crockett was lying unconscious with his feet under the steering wheel and his body across the collapsed front seat. The Commonwealth argued there was not enough time before witnesses and first responders arrived for a mystery driver to collect himself after such a violent crash, disentangle himself from the damaged vehicle and the occupants in it, exit the vehicle and then flee from the scene.

The jury found Crockett guilty of involuntary manslaughter and recommended a five-year sentence. But Crockett, rather than appearing for his sentencing hearing, absconded to Guatemala. As a result, he faced an additional felony charge.

Crockett later obtained new counsel, who moved to test the Honda's seatbelt in preparation for other potential charges related to the incident. The trial court granted that motion. Then, at sentencing for the involuntary manslaughter conviction and abscondment offense, Crockett moved for a new trial based on alleged newly discovered evidence that showed he was not the driver. In support of the motion, Crockett submitted a report of retained expert David Pape, Ph.D., P.E. ("Pape Report") which concluded that one section

of the driver's seatbelt webbing had "cupping" consistent with occupant forces during a collision. Cupping generally means a wavy appearance that, in a very general sense, can result from the stresses on a belt from sudden movements of a belted-occupant's body during an accident. According to the Pape Report, the cupping "suggested that the seatbelt was being worn by the driver at the time of the collision." J.A. 1608. In other words: "If the seat belt was not in use during the collision one would not expect this cupping." J.A. 1609. Based on the testimony of witnesses who saw him after the crash, his position in the car and his lack of injuries consistent with wearing a seat belt, Crockett claimed he was not belted. According to Crockett, this proved he was not the driver. In addition, Crockett called a classmate of Palmer's who testified she overheard Palmer say "I just got free. . . . I thought I killed them both." J.A. 1167.

The Commonwealth responded that the police report's references to the driver and the seat belt had long been available and known. Therefore, it argued the evidence on which Crockett's motion was based was not new and was previously available to pursue.

The trial court denied Crockett's motion for a new trial. It explained that the evidence introduced could have been pursued at trial. In fact, the court recognized that, although he was available, neither party elected to call Palmer during the guilt phase. As a result, neither his testimony nor that of any witnesses who could have been called in response for impeachment purposes was presented to the jury. The court also held that, in light of all the evidence presented, the evidence offered by Crockett in support of his motion would not produce a different result.

The trial court then imposed the jury's verdict of five years for the involuntary manslaughter conviction. And after Crockett pleaded guilty to the felony failure to appear, the court imposed a five-year sentence for that charge, suspending two of those years conditioned on good behavior under supervised probation. Thus, the trial court imposed an active sentence of eight years.

C. *Direct Appeal*

Crockett appealed his conviction, including the denial of his motion for a new trial, to the Court of Appeals of Virginia. In affirming the denial of the motion for a new trial based on newly discovered evidence, the court agreed that the expert opinion about the seatbelt mechanism could have been secured for use at trial in the exercise of reasonable diligence. Further, the Court of Appeals noted that the Pape Report only "suggests" that the driver's seatbelt was in use at the time of the accident. J.A. 1245. As for the claim that witnesses heard Palmer say he was the driver, the court found that the trial judge did not abuse his discretion in ruling that the evidence was unlikely to produce an opposite result at another trial. The full court denied Crockett's petition for rehearing en banc and the Supreme Court of Virginia denied Crockett's petition for appeal and petition for rehearing as well.

D. *State Habeas Proceedings*

After his unsuccessful appeal, Crockett filed, pro se, an extensive writ of habeas corpus in Virginia state court. Among his arguments, Crockett contended that his trial counsel provided ineffective assistance by failing to investigate and present exculpatory

evidence pertaining to the driver's side seatbelt mechanism.[2] In support of this claim, Crockett presented the Pape Report. In addition, Crockett introduced an email exchange between Pape and Crockett's uncle. In that exchange, Pape told Crockett's uncle that he would be comfortable adding that the conclusions were accurate to a reasonable degree of engineering certainty at the time of the inspection. Crockett introduced an affidavit from an investigator who worked with Crockett's counsel. The investigator testified that he urged counsel to test the seat belt, that trial counsel agreed that testing the belt was important, but that the testing just fell through the cracks. Crockett also introduced the affidavit of a consulting engineer who testified that trial counsel had retained him in Crockett's case. The engineer said he recommended that counsel have the seat belt tested and he told counsel that, to a reasonable degree of engineering certainty, Crockett could not have ended up in the position he was found in the car on the night of the accident had he been the belted driver. Finally, Crockett introduced affidavits from two of the trial jurors who generally testified that they would not have found Crockett guilty had they seen the seatbelt information.

In response, the Commonwealth introduced an affidavit from Crockett's trial counsel who explained that whether the driver was belted was discussed at various times

[2] Crockett also argued that (1) police violated *Miranda v. Arizona*, 384 U.S. 436 (1966), and trial counsel failed to adequately investigate and present his motion to suppress statements on that ground; (2) Crockett's statements were involuntary and trial counsel failed to adequately investigate and present his motion to suppress statements on that ground; (3) counsel failed to interview and call Jacob Palmer and others as witnesses; (4) sentencing counsel failed to preserve Crockett's post-verdict challenge under *Brady v. Maryland*, 373 U.S. 83 (1963), and the Commonwealth violated *Brady* by suppressing favorable evidence; and (5) Crockett was actually innocent.

and that he "neither ignored it nor rejected it as out of hand." J.A. 1808. Ultimately, he decided not to test the seat belt for several strategic reasons, including concerns about the admissibility of accident reconstruction evidence in Virginia, the potential unfavorable results of any such testing and the risk that pursuing the testimony might open the door to even more damaging evidence against Crockett.

In considering the ineffective assistance of counsel claims, the state court applied *Strickland v. Washington*, 466 U.S. 668 (1984). The court explained Crockett had the burden of showing both that his attorney's performance was deficient and that he was prejudiced as a result. The court found it significant that Crockett "failed to proffer any expert opinion explaining the manner of injuries one would expect to find as a consequence of the use of a seatbelt in a collision." J.A. 1842. It added, "[i]n the absence of such opinion, his argument that [the] analysis of the seatbelt indicated its use at the time of the collision, standing alone, is meaningless." J.A. 1842. The court indicated that this failure was fatal to his claim of ineffective assistance of counsel. The court also discussed how trial counsel's determinations and trial decisions were not unreasonable. It denied the petition, concluding that Crockett failed to demonstrate both deficient performance of counsel and prejudice required under *Strickland*.

Crockett appealed ultimately to the Supreme Court of Virginia. After reviewing the record, that court concluded:

> [T]here is no reasonable probability, based on this record, that a reasonable jury would have believed [Palmer] was the belted driver of the car, that during the crash Crockett, who claimed he was sitting in the backseat, was thrown on top of [Palmer] and the driver's seat, landing on his back with his feet near the steering wheel and his head in the rear of the car, or that after

> the impact during the approximately thirty seconds to one minute before witnesses arrived at the wrecked car, [Palmer] managed to unbuckle his seatbelt and extricate himself from under Crockett and from the wrecked car and slip away into the woods, unnoticed by the crowd, and then return, on foot and unscathed, to a party some distance away that Crockett, Korte, and [Palmer] had attended earlier in the evening. There is therefore no reasonable probability that, absent Crockett's statements, the fact finder could have had a reasonable doubt as to whether Crockett was the driver of the car that crashed.

J.A 1856.

Specifically concerning Crockett's claim about the driver's seatbelt, the court concluded that counsel was deficient. The court noted:

> The record, including Crockett's habeas exhibits, demonstrates that although counsel pursued the possibility of obtaining an expert to inspect and test the seatbelt in hopes of presenting the expert's testimony at trial to support the theory that the driver was belted while Crockett, according to witnesses, was not, counsel ultimately elected not to pursue this evidence. Counsel claimed he made this decision because the expert was unavailable and because he was concerned any such evidence might be inadmissible accident reconstruction evidence. However, the affidavits of disinterested witnesses, Alan Donker, counsel's investigator, and Paul Lewis, Jr., a biomedical engineer, show that for unknown reasons, counsel simply failed to follow-up with Lewis to have the seatbelt examined before Crockett's second trial.

J.A.1858. However, "[n]otwithstanding counsel's deficient representation," the court concluded that Crockett "failed to establish prejudice under *Strickland.*" J.A. 1858. The court determined that the Pape Report "only 'suggest[ed]' the driver's seatbelt was in use at the time of the crash based on 'cupping' on the belt." J.A. 1858 (alteration in original). Thus, based on the report, "it cannot be said there is a reasonable probability that the result of the proceeding would have been different had this evidence been obtained and admitted before the jury." J.A. 1858–59. Ultimately, the Supreme Court of Virginia disagreed with

the habeas court on the sufficiency of counsel's representation. But it nevertheless affirmed the denial of the habeas petition, concluding Crockett was unable to establish prejudice.

E. *Federal Habeas Proceedings*

Next, Crockett filed a pro se 28 U.S.C. § 2254 petition in the Eastern District of Virginia. Crockett again argued trial counsel was ineffective for failing to investigate and present evidence involving the driver's seatbelt mechanism.[3] Crockett argued that the state court's prejudice ruling was based on an unreasonable determination of the facts and overlooked the substance of the Pape Report and findings, and that any concerns about the certainty of the report should have been resolved only after an evidentiary hearing.

The district court denied the § 2254 petition. In addressing Crockett's claim for ineffective assistance of counsel relating to the seatbelt issue, the district court denied relief based on the absence of prejudice under *Strickland*. The court concluded it was not reasonably likely that the Pape Report would outweigh the other evidence of Crockett's guilt presented at trial. The court determined that the evidence of Crockett's guilt was overwhelming, explaining that none of the witnesses—most of whom arrived at the vehicle

[3] Crockett pressed eight grounds before the district court: (1) Crockett is actually innocent; (2) trial counsel was ineffective for failing to investigate and present evidence involving the driver's seatbelt mechanism; (3) Crockett's *Miranda* rights were violated when police interrogated him in a custodial setting without advising him of his rights against self-incrimination; (4) Crockett's statements to the police were involuntary; (5) the Commonwealth violated *Brady v. Maryland* by suppressing exculpatory evidence; (6) the cumulative effect of the *Brady* violations and of the ineffective assistance of counsel deprived Crockett of a fair trial; (7) the Commonwealth violated *Batson v. Kentucky*, 476 U.S. 79 (1986), by striking two African-American women from the venire; and (8) the prosecuting attorney had a conflict of interest that violated Crockett's constitutional right to a fair trial. However, this Court granted a certificate of appealability only for the ineffective assistance of counsel claim based on the seatbelt evidence.

within just a few minutes of the crash—saw a third person exit the vehicle or flee the scene. And although the evidence presented at trial suggested no one observed Crockett wearing a seatbelt, no evidence conclusively showed he was not wearing a seatbelt at the time of the incident either. In sum, the court held that it is not reasonably likely that the result would have been different as required by *Strickland*. Even so, the court admitted that it "does not doubt that evidence regarding the use of the driver's seatbelt would have been relevant at trial." J.A. 2165.

Crockett timely appealed. We have appellate jurisdiction over final decisions pursuant to 28 U.S.C. § 1291. But Crockett may not appeal the dismissal of his § 2254 petition "[u]nless a circuit justice or judge issues a certificate of appealability." *See* 28 U.S.C. § 2253(c)(1)(A). We granted a certificate of appealability on a single issue: Whether Crockett established that he was prejudiced by counsel's failure to investigate and present evidence about the driver's seatbelt mechanism and, if not, whether he was entitled to an evidentiary hearing on the issue. ECF No. 20.[4]

[4] Crockett was released from active incarceration in May 2019 to serve a two-year period of supervised probation (ECF No.5). This raises two issues that we address before turning to the merits of Crockett's appeal. The first is mootness. The case is not moot because the existence of certain "collateral consequences" to the petitioner's conviction prevent a habeas petition from becoming moot. *Plymail v. Mirandy*, 8 F.4th 308, 315 (4th Cir. 2021). The second is whether Crockett is "in custody" as required by § 2254. The statute only requires that Crockett be in custody at the time the § 2254 was filed, which he was, so his release from custody does not bar our review under § 2254. *See Plymail*, 8 F.4th at 314.

II.

On appeal, Crockett argues the Supreme Court of Virginia unreasonably applied *Strickland* in its prejudice analysis by not considering the totality of the evidence and minimizing the Pape Report. He insists the evidence demonstrated that the driver of the car was wearing a seatbelt, while Crockett was found, unbelted, and primarily in the backseat. Crockett argues that, had such evidence been admitted, it was "reasonably likely that at least one juror would have found reasonable doubt as to whether Mr. Crockett was the driver." Appellant's Br. 27. Alternatively, Crockett asks us to remand to the district court for an evidentiary hearing to assess the prejudicial effect of trial counsel's failure to investigate the seatbelt mechanism.

A. *Standard of Review*

We review the district court's decision on a federal habeas petition de novo. *Nicolas v. Attorney Gen. of Md.*, 820 F.3d 124, 129–30 (4th Cir. 2016). That requires us to review Crockett's appeal through the lens of AEDPA and *Strickland*. *See Wood v. Stirling*, 27 F.4th 269, 276 (4th Cir. 2022).

Under AEDPA, federal courts may consider a state prisoner's habeas petition that asserts he is in custody in violation of the Constitution or the laws of the United States. 28 U.S.C. § 2254(a). Because such claims implicate concerns about federalism and comity, the standard for such claims is exceedingly high. *See Burt v. Titlow*, 571 U.S. 12, 19 (2013). Where a state court has previously ruled on the alleged wrongful conviction, as has happened in this case, concerns of comity and federalism "reach their apex." *Valentino v. Clarke*, 972 F. 3d. 560, 575 (4th Cir. 2020).

When a state prisoner's claim has already been adjudicated on its merits, § 2254 restricts federal habeas relief to limited circumstances. One avenue is § 2254(d)(1). Under it, the prisoner must show that the state court's determination "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." 28 U.S.C. § 2254(d)(1). As the Supreme Court has explained:

> [A] state-court decision can involve an "unreasonable application" of [the Supreme] Court's clearly established precedent in two ways. First, a state-court decision involves an unreasonable application . . . if the state court identifies the correct governing legal rule . . . but unreasonably applies it to the facts of the particular state prisoner's case. Second . . . if the state court either unreasonably extends a legal principle from [the Supreme Court's] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply.

Williams v. Taylor, 529 U.S. 362, 407 (2000) (O'Connor, J., delivering the majority opinion with respect to Part II). For the purposes of § 2254(d)(1), to be "unreasonable," the state court's application of that law must be "objectively unreasonable," not simply incorrect. *Owens v. Stirling*, 967 F.3d 396, 411 (4th Cir. 2020). Federal courts owe state tribunals "significant deference" with respect to "their determination that a state prisoner isn't entitled to habeas relief." *Id.*

The other avenue of relief is § 2254(d)(2). Under it, the prisoner must show the state court proceedings "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(d)(2). That means the "federal court must conclude not only that the state court's determination was wrong, but that it was *unreasonable* in light of the evidence presented,

that is, it is not 'debatable among jurists of reason.'" *Merzbacher v. Shearin*, 706 F.3d 356, 368 (4th Cir. 2013) (emphasis in original) (internal citation omitted). The Supreme Court has noted that this "unreasonable" reference under AEDPA is a "substantially higher threshold" and a more demanding standard than prior standards for granting federal habeas relief. *See Schriro v. Landrigan*, 550 U.S. 465, 473–74 (2007). Additionally, AEDPA requires federal habeas courts to presume the correctness of the state courts' factual findings unless applicants rebut this presumption with "clear and convincing evidence." *See* 28 U.S.C. § 2254(e)(1); *Schriro*, 550 U.S. at 473–74.

The Supreme Court has provided clear guidance on the difficulty satisfying either prong of § 2254(d). "Section 2254(d) reflects the view that habeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Harrington v. Richter*, 562 U.S. 86, 102–03 (2011) (internal citation omitted). To obtain habeas relief from a federal court, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103. The Supreme Court has stated, "[i]t bears repeating that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Id.* at 102. It is hard to overstate the difficulty of the burden that must be met. As the Supreme Court explained: "If this standard is difficult to meet, that is because it was meant to be." *Id.*

But because Crockett's § 2254 claim alleges ineffective assistance of counsel, his burden is even steeper. When a state prisoner seeks § 2254 relief for ineffective assistance

of counsel, we apply the "highly deferential" *Strickland* standard. *Owens*, 967 F.3d at 412. In *Strickland*, the Supreme Court offered its well-known explanation of the Sixth Amendment's guarantee to an accused the assistance of counsel for his defense. The guarantee supports ensuring criminal defendants get a fair trial and in doing so acknowledges that an accused's attorney can make unprofessional errors so serious that they undermine the adversarial process as well as the constitutional guarantee. *See* 466 U.S. at 686–89; *see also Valentino*, 972 F.3d at 579–80 (explaining *Strickland*). In *Strickland*, the Supreme Court set forth a two-part test to evaluate ineffective assistance of counsel claims. First, the petitioner must show counsel's performance was deficient and fell below an objective standard of reasonableness. *See Strickland*, 466 U.S. at 687–88. Second, the petitioner must show prejudice, meaning "there is a reasonable probability that, but for counsel's unprofessional 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. Counsel gets the strong presumption that he or she rendered "adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Burt*, 571 U.S. at 22 (quoting *Strickland*, 466 U.S. at 690).

"AEDPA and *Strickland* thus provide 'dual and overlapping' lenses of deference, which we apply 'simultaneously rather than sequentially.'" *Owens*, 967 F.3d at 411. "This double-deference standard effectively cabins our review to a determination of 'whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard.'" *Morva v. Zook*, 821 F.3d 517, 528 (4th Cir. 2016).

With these principles in mind, we turn to Crockett's claim.

B. *28 U.S.C. § 2254(d)(1)*

Crockett argues that the Supreme Court of Virginia failed to apply the totality of the evidence standard of *Strickland* resulting 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." 28 U.S.C. § 2254(d)(1). Thus, we review the Supreme Court of Virginia's application of *Strickland* as it pertains to counsel's failure to investigate and present evidence related to the driver's seatbelt.

After correctly outlining the two prongs of the *Strickland* test, the Supreme Court of Virginia applied the law to Crockett's claim. It found that Crockett met his burden of showing deficient representation by his trial counsel. But it held that Crockett "failed to establish prejudice under *Strickland*." J.A. 1858. In explaining that decision, the court focused on the primary evidence on which Crockett's petition was based: the Pape Report. It noted that the report merely "'suggest[ed]' the driver's seatbelt was in use at the time of the crash." J.A. 1858 (alteration in original). Because of that, the court held that "it cannot be said there is a reasonable probability that the result of the proceeding would have been different had this evidence been obtained and admitted before the jury." J.A. 1858–59.

Crockett disagrees with the court's analysis. And arguably, reasonable jurists could have agreed with Crockett. *See Valentino*, 972 F.3d at 583. But that, of course, is not our standard. AEDPA requires much more. AEDPA requires an "extreme malfunction[] in the state criminal justice system[]," *Harrington*, 562 U.S. at 102, such as a decision "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103. That is not what we have

here. To the contrary, the Supreme Court of Virginia based its decision, in part, on the less than conclusive language Pape used in his report.[5]

But the court did not stop there. It also evaluated the persuasiveness of Crockett's theory that Palmer was driving the car. As described above, the court determined there was no possibility that a reasonable jury would believe that Palmer—after a violent crash in which Korte was killed, Crockett was knocked unconscious, the front seat collapsed and Crockett landed on top of the collapsed front seat—would be able to disentangle himself from the seat and Crockett, exit the car and not be noticed by any of the witnesses. While Crockett disagrees with this analysis as well, the court based its decision on a full assessment of evidence presented at Crockett's trial. One could certainly come to a different conclusion. But the conclusion reached by the Supreme Court was not unreasonable.

[5] While not presented to us, the Pape Report would likely have led to a bevy of questions. For example, were there other potential causes of the cupping? Were those causes ruled out? Is there other evidence, besides cupping, that would suggest whether or not the seat belt was being worn at the time of the accident? What testing was actually done? How much or how little of the belt was tested? What was the methodology of that testing? Has the methodology been peer reviewed? What is the potential rate of error of Pape's conclusions? Did the failure of the police to maintain and preserve the evidence compromise the testing? If Crockett introduced expert testimony about the seatbelt, surely the Commonwealth could have done the same, and if so, whose expert would have been more persuasive? And so on. Perhaps these questions would have been answered favorably to Crockett. Or perhaps not. Neither these questions nor the answers to them are necessary to our conclusions. They simply illustrate that expert testimony is not necessarily the silver bullet Crockett suggests. And at the same time, they also highlight the sort of issues Crockett's trial counsel was dealing with at the ground level as he decided whether to pursue the testimony in the first place.

Undeterred, Crockett advances another argument. He insists that the Supreme Court of Virginia did not consider the totality of the evidence—specifically, additional evidence that would have driven home "the significance of the belted driver." Appellant's Br. 42. For example, he claims the court did not consider how jurors would have reacted to testimony from an expert engineer that Crockett's position in the car was inconsistent with him being the belted driver.

First, it is important to accurately frame this argument. To the extent Crockett attempts to make *Strickland*'s reference to the "totality of the evidence" into a third prong of *Strickland*, we reject the invitation. "[T]otality of the evidence" is a part of the prejudice analysis whereby a court considers the "broad evidentiary picture before the jury." *See Valentino*, 972 F.3d at 583; *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011).

Second, even considering this additional argument regarding prejudice, Crockett's claim fails. Contrary to Crockett's assertions, the Supreme Court of Virginia considered all the evidence. It specified that Crockett filed over 400 exhibits and stated that it considered the "pleadings [related to the habeas petition] and the record in Crockett's manslaughter case." *See* J.A. 1852–53.

What's more, under AEDPA, a state court need not refer to each piece of a petitioner's evidence. *See generally Moore v. Hardee*, 723 F.3d 488, 499 (4th Cir. 2013). The opposite is true. The deference required under AEDPA means that if the state court offers a conclusion on the "prejudice question without articulating its reasoning supporting that conclusion, we must determine what arguments or theories . . . could have supported the state court's determination that [petitioner] failed to show prejudice." *Shinn v. Kayer*,

141 S. Ct. 517, 524 (2020) (ellipsis in original) (internal quotation marks omitted). Indeed, "we must assess whether fairminded jurists could disagree on the correctness of the state court's decision if based on one of those arguments or theories." *Id.* (internal quotation marks omitted); *see also Cullen v. Pinholster*, 563 U.S. 170, 187 (2011) ("Section 2254(d) applies even where there has been a summary denial."). For example, although it did not expressly rely on this information, the court recounted Crockett's own statements to officers following the accident. He asked one officer "I mean did I hit someone or I mean?" J.A. 1853. He also initially denied anyone else was in the car. And after finally admitting Korte was in the car and being told he died, Crockett responded, "That figures." J.A. 489. This evidence, which is certainly damaging to Crockett, could be considered if the Supreme Court of Virginia failed to adequately explain its reasoning. But because it provided an explanation—and a reasonable one at that—we need not fill any gaps here.

For those reasons, we reject Crockett's argument that state court failed to consider the totality of the evidence.

C. *28 U.S.C. § 2254(d)(2)*

Crockett also maintains that the Supreme Court of Virginia's *Strickland* prejudice analysis, in particular the court's discussion of the Pape Report, rested on an "unreasonable determination of the facts in light of the evidence" under 28 U.S.C. § 2254(d)(2). Crockett argues that the court improperly discounted the report by focusing on the term "suggested" when referring to the use of the driver's seatbelt at the time of the collision. *See* J.A. 1858 (quoting J.A. 1607).

Even though Crockett frames his argument differently, this is essentially the same argument he made under § 2254(d)(1). So, we need not repeat that analysis. The Supreme Court of Virginia did not discount or mischaracterize the report. It simply did not find it persuasive in light of all of the other evidence. For basically the same reasons discussed above, Crockett failed to meet his burden under § 2254(d)(2).

III.

AEDPA's demanding standard is rooted in the principles of comity and federalism embedded in our constitutional system of government. In that system, state governments, including their judicial branches, deserve federal courts' respect and deference. In light of the deferential standard upon which we review the state court's adjudication, for the reasons set forth above, we affirm the district court's dismissal of Crockett's § 2254 petition and denial of Crockett's request for an evidentiary hearing.[6]

AFFIRMED

[6] We also reject Crockett's alternative plea for an evidentiary hearing in the district court. We review a district court's decision not to hold an evidentiary hearing in a postconviction proceeding for abuse of discretion. *See Gordon v. Braxton*, 780 F.3d 196, 204 (4th Cir. 2015). "Although state prisoners may sometimes submit new evidence in federal court, AEDPA's statutory scheme is designed to strongly discourage them from doing so." *Cullen*, 563 U.S. at 186. The district court denied Crockett's request for a hearing, concluding that the substance of the newly identified evidence did not outweigh the substantial and compelling evidence of Crockett's guilt. In so concluding the district court cited *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007), which confirms that the deferential standards of § 2254 must be considered when deciding whether an evidentiary hearing is appropriate. In *Schriro*, the Supreme Court held that "[i]t follows that if the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." *Id.* In light of the evidence and the records before the district court, we find no abuse of discretion in the district court's decision to deny the motion for an evidentiary hearing.