No. 23-12275

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

SADIK BAXTER,

Petitioner-Appellant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
Case No. 0:21-cv-62301
The Honorable Beth Bloom

PETITIONER-APPELLANT SADIK BAXTER'S REPLY BRIEF

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned hereby certifies that, in addition to those named in appellant's opening brief and appellee's response brief, the following person may have an interest in the outcome of this appeal:

Graham, Wynne Muscatine (Counsel for Petitioner-Appellant)

Pursuant to Eleventh Circuit Rule 26.1-3, the undersigned further certifies that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

Dated: February 21, 2025

Respectfully Submitted,

s/ Christine A. Monta
Christine A. Monta

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INTRODUCTION

This appeal raises serious questions about the constitutionality of a punishment scheme that mandates sentencing someone to die in prison for a fatal accident he did not cause, intend, or play any part in. It also presents substantial claims Mr. Baxter's appointed trial lawyer "was not functioning as the 'counsel' guaranteed…by the Sixth Amendment," *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Respondent has little to say about these serious constitutional issues. Indeed, he does not even attempt to explain how mandatorily sentencing someone to the "second most severe penalty permitted by law," *Graham v. Florida*, 560 U.S. 48, 69 (2010), for accidental deaths he had no involvement in comports with a prohibition on "cruel and unusual punishment." U.S. Const. amend. VIII.

Instead, Respondent largely deflects with strained procedural arguments, *ad hominem* attacks, and false assertions that Mr. Baxter was a "recidivist offender." As Respondent knows, however, Mr. Baxter was not a "recidivist offender," he did not qualify as a recidivist under Florida law, and he thus was not charged or sentenced as a recidivist. Recidivism, like Respondent's character attacks, has zero bearing on the

constitutionality of Mr. Baxter's sentence or any other issue in this appeal. This Court should be wary of such attempts at misdirection, particularly in a case with such high stakes.

While review is *de novo*, Mr. Baxter would be entitled to relief even under AEDPA. It is indisputably cruel and unusual to consign a man to die in prison for a fatal collision he played no part in just because twenty minutes earlier he engaged in a minor property crime with the driver. The ineffectiveness of Mr. Baxter's trial counsel—who made no effort to exclude the principal evidence against him and then failed to advise him that pleading to that property crime would be an effective concession to felony murder—is also beyond debate. This Court should reverse.

ARGUMENT

I. Mr. Baxter Has Proved His Ineffective-Plea-Advice Claim.

A. Review is *de novo*.

As explained in the opening brief, OB.22-25, the state court applied a rule contrary to the governing Supreme Court standard. Instead of addressing the questions *Hill v. Lockhart*, 474 U.S. 52 (1985), requires—whether counsel's plea advice was objectively unreasonable, and whether there was a "reasonable probability" Mr. Baxter would have rejected the

pleas with correct advice, *id.* at 58-59—the court addressed an entirely different question, asking only whether the pleas served a "purpose" at trial, Doc.9-5 at 15.

Respondent concedes the state court did not even mention *Hill* or explicitly analyze either prong, but contends that scattered remarks in its ruling reflect an implicit assessment of both *Hill* inquiries. Answering Brief ("AB") 32-34. Respondent's reading collapses under scrutiny.

First, Respondent argues a handful of "findings" the court made "[t]aken together" show counsel "advised Baxter of the consequences of his plea," and that, accordingly, the court must have implicitly "assessed the deficiency prong under the correct legal test." AB.34. But none of the "findings" Respondent cites addressed the substance of counsel's pre-plea advice, much less suggested he advised Mr. Baxter of the repercussions pleading would have for the felony-murder counts. Indeed, the only evidence on that point were Mr. Baxter's sworn attestations that counsel "failed to discuss these ramifications with [him]," Doc.9-2 at 17—attestations the state court never discredited, Doc.9-5 at 9-15.

Second, Respondent claims the state court "discuss[ed]…the prejudice prong," asserting that it "explained" Mr. Baxter "would have"

pled "with or without complete legal advice." AB.34. To the contrary, the court did not address what he would have done with "complete legal advice," AB.34, other than to note his sworn attestation that he "would not have" pled "had he been properly advised," Doc.9-5 at 9, which it never discredited or even opined on. Respondent also highlights the court's remark that the defense strategy was a "result of the evidence," and infers from that a conclusion that it was "highly unlikely" Mr. Baxter would have opted to contest the burglaries. AB.34. But, again, the court itself never opined on that probability—its focus was only whether pleading served a "strategy" or "purpose," Doc.9-5 at 15, not the likelihood Mr. Baxter would still have pursued that strategy with proper advice.

In short, Respondent's attempt to imbue the state court's decision with implicit *Hill* rulings fails. The court applied a rule contrary to *Hill*, so review is *de novo*. *Calhoun v. Warden, Baldwin State Prison*, 92 F.4th 1338, 1349 (11th Cir. 2024). But even if AEDPA deference applied, Mr. Baxter would be entitled to relief, as the state court's ruling constituted an "unreasonable application" of *Hill*. 28 U.S.C. § 2254(d)(1); *see* OB.25.

B. Mr. Baxter is entitled to relief.

Mr. Baxter satisfied both elements of his *Hill* claim. OB.25-29. On the first prong, Respondent does not dispute that failing to advise a client in the way Mr. Baxter asserts constitutes deficient performance. Instead, Respondent construes the district court's remarks that Mr. Baxter's "claim" was "refuted by the record" and "contentions…wholly incredible," Doc.31 at 12, as a factual "finding" that his lawyer *did* "advise him of the elements of felony murder and the consequences of his plea," and argues that this Court must defer to that finding unless clearly erroneous, AB.36. That argument falters on several levels.

First, those comments were not a factual "finding" meriting deference. The district court's references to Mr. Baxter's "contentions" and "claim," Doc.31 at 12, make clear the court was opining on the merits of his ineffectiveness claim, not resolving a factual dispute. Indeed, the court did not undertake any factfinding, like reviewing evidence or hearing testimony, and thus was no "better positioned" to weigh factual issues than this Court. *Thompson v. Keohane*, 516 U.S. 99, 109-11 (1995) (findings receiving deference are those on "basic, primary, or historical facts" that the "trial court is better positioned" to make).

Second, even if the district court's remarks could be considered a factual finding, it was about what Mr. Baxter knew by the time of trial, not what he was advised before pleading. The court defined Mr. Baxter's "claim" as being that counsel "did not advise him about the effects of his plea *during trial for felony murder*," and deemed that "claim…refuted by the record" based on counsel's mentions of the pleas *at trial*. Doc.31 at 12 (emphasis added). It made no findings about what counsel advised *before* Mr. Baxter took the pleas, much less that he "advise[d] him of the elements of felony murder and the consequences of his plea." AB.36.

Nor would there have been any basis to: the only record evidence on counsel's *pre-plea* advice were Mr. Baxter's sworn attestations that counsel failed to discuss this with him. Doc.9-2 at 10-14, 17-20, 40. There was no evidentiary hearing, so neither counsel nor Mr. Baxter testified. As such, the district court could not assess factors bearing on Mr. Baxter's credibility, like the details of his account or "variations in demeanor and tone of voice."[1] *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1335

[1] Respondent's claim the district court based its ruling on Mr. Baxter's "track record of lying and manipulation," AB.37, is demonstrably untrue. The court did not even mention, much less rely on, any of the points Respondent offers for this *ad hominem* attack, most of which are just Mr. Baxter's recollections of conversations that

(11th Cir. 1999) (citation omitted). Accordingly, if the court *did* make the finding Respondent asserts, such finding would be clearly erroneous. *Id.* (finding is clearly erroneous when "not supported by the record or…contrary to the evidence").[2]

As to prejudice, Respondent argues there is no "reasonable probability" Mr. Baxter would have rejected open pleas to burglary had he been correctly advised. AB.38. Respondent does not address the principal proof on that question: Mr. Baxter's sworn attestation he "would have proceeded to trial on all counts" with proper advice, Doc.9-2 at 13, and the fact he received no benefit from his open pleas and thus would lose nothing by taking the burglary counts to trial. *See* OB.27-28. Instead, Respondent argues it "would have been foolhardy" to do so

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Respondent disbelieves, or statements he gave while heavily medicated and scared in his interrogation. *Compare* Doc.31 at 11-12 *with* AB.37.

[2] Respondent's argument that the "indictment itself" notified Mr. Baxter of the pleas' consequences for the felony-murder charges, AB.36, is meritless. The indictment did not "state[] that the burglaries were an element of felony murder," AB.36, much less that the State had to prove them beyond a reasonable doubt or that his pleas would relieve it of that burden. *See* Doc.9-1 at 8. *That* was the information he needed to have "a full understanding of" the pleas' "consequence." *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). The indictment did not provide it, much less with the clarity and detail this Court has required to "cure" deficient plea advice. *See, e.g.*, *Kealy v. United States*, 722 F. App'x 938, 946 (11th Cir. 2018); *United States v. Wilson*, 245 F. App'x 10, 12 (11th Cir. 2007).

because the confession and Kantor's testimony made the burglaries "not remotely 'contestable.'" AB.38. That is meritless, for several reasons.

First, Mr. Baxter challenges counsel's failure to move to suppress his confession. Had it been suppressed, the State would have had no evidence he was acting in concert with Oakley or that he burglarized any vehicle except Kantor's. It is extraordinarily unlikely he would have pled in that circumstance. This Court must consider the cumulative impact of counsel's pretrial errors when assessing prejudice. *Evans v. Sec'y, Fla. Dep't of Corr.*, 699 F.3d 1249, 1269 (11th Cir. 2012).

Second, even assuming the confession were admitted, entering open pleas to burglary wasn't the only "card" he had "to play." AB.38. For starters, even if he wished to concede the burglaries to "improve his credibility," AB.38, he didn't need to plead to do so: he could have just admitted them in opening statements. *See generally Florida v. Nixon*, 543 U.S. 175, 187-92 (2004). All pleading accomplished was foreclosing any other possible strategy and putting him in a worse bargaining position to negotiate a favorable deal on the homicides. *See, e.g.*, Doc.10-2 at 14 (rejecting plea offer to "double digits" because he had "already pled to the burglaries"). Respondent fails to explain how rejecting open

pleas, which gave him no sentencing benefit or strategic advantage at trial, would not have been "rational under the circumstances." *Lee v. United States*, 582 U.S. 357, 370 (2017).

Moreover, conceding the burglaries was not the only possible defense, or even the best one. *See* Doc.10-2 at 8 (judge noting guilty pleas created a "good possibility" of conviction). He could have elected instead to make the State prove a common design to commit burglary and tried to sow reasonable doubt in its case. *See* OB.28-29. His confession did not foreclose that strategy. Unlike pleas, confessions "are not conclusive of guilt." *Crane v. Kentucky*, 476 U.S. 683, 689 (1986). Even when a confession is admissible, the accused may still "convince the jury that the manner in which [it] was obtained casts doubt on its credibility." *Id.*; *see also Lego v. Twomey*, 404 U.S. 477, 486 (1972) (accused can "familiarize a jury with circumstances that attend the taking of his confession").

Here, for example, counsel could have sought to cast doubt on key aspects of the confession, such as whether there really was a joint "plan" to burglarize cars or whether Mr. Baxter, scared and disoriented, just relented to the detectives' insistence it was "planned." *See* OB.8-9. Counsel could also have highlighted Mr. Baxter's statements he was

impaired on prescription drugs to cast doubt on whether he could form the requisite intent to commit burglary. *See* Doc.10-2 at 774 (intent element); Fla. Stat. § 775.051 (voluntary intoxication defense permissible when it derives from prescribed medication). That "[n]ot everyone" in Mr. Baxter's position would "make the choice to" pursue this strategy does not mean "it would be irrational to do so." *Lee*, 582 U.S. at 371.

Because Mr. Baxter has satisfied both *Hill* prongs, he is entitled to relief. At a minimum, this Court should remand so he and counsel can testify about their pre-plea conversations. *See Daniel v. Comm'r, Ala. Dep't of Corr.*, 822 F.3d 1248, 1280 (11th Cir. 2016); OB.30-31.

II. Mr. Baxter Is Entitled To An Evidentiary Hearing On His Suppression Claim.

A. Review is *de novo*.

As explained in the opening brief, OB.31-37, review of Mr. Baxter's ineffectiveness claim based on counsel's failure to seek suppression of his confession is *de novo* for two independent reasons: the state court's ruling was based on an "unreasonable determination of the facts," 28 U.S.C. § 2254(d)(2), and it constituted an "unreasonable application" of *Strickland*, *id.* § 2254(d)(1).

Respondent does not defend the state court's unreasonable factual finding that the interrogation transcript "clearly showed" Mr. Baxter "was not impaired." Doc.9-5 at 27. Instead, Respondent argues counsel lacked a "good faith basis" to file a suppression motion for a new reason: Mr. Baxter's impairment fell short of "mania," the standard to establish a confession's "involuntariness" in Florida. AB.22-23.

Mr. Baxter's claim, however, is not that counsel should have moved to suppress because the confession was "involuntary," but because his *Miranda* waiver was not knowing and intelligent. OB.31-38; Doc.9-2 at 33-35. Those are distinct inquiries. *See United States v. Bernal-Benitez*, 594 F.3d 1303, 1318 (11th Cir. 2010); *Ramirez v. State*, 739 So.2d 568, 575 (Fla. 1999); 23 C.J.S. Criminal Procedure and Rights of Accused § 1298 ("The validity of a waiver of *Miranda* rights is a separate inquiry from whether the ensuing statement itself was voluntarily made.").

While the archaic "mania" language arises in cases challenging a confession's voluntariness, *see* AB.23-24, it is irrelevant to whether a *Miranda* waiver was "made with a full awareness of…the nature of the right being abandoned and the consequences of the decision to abandon

it," *Ramirez*, 739 So.2d at 575 (cleaned up). Indeed, Respondent cites no case holding that "mania" is required for a *Miranda* waiver claim.

Respondent does not address the relevant question under § 2254(d)(1): whether a competent defense lawyer could have concluded, from the interrogation transcript alone, there was no good faith basis to even "explore[] the possibility," *Newland v. Hall*, 527 F.3d 1162, 1187, 1191 (11th Cir. 2008), of moving to suppress on the ground that Mr. Baxter's *Miranda* waiver was not knowing and intelligent—a claim that, under Florida law, the State would have borne the "heavy" burden to disprove, *Ramirez*, 739 So.2d at 575.

The moments of arguable lucidity Respondent highlights, AB.24-25, cannot salvage the state court's ruling. Its finding that the transcript "clearly showed" Mr. Baxter "was not impaired," Doc.9-5 at 27, was plainly an "unreasonable determination of the facts," § 2254(d)(2), so *de novo* review is required for that reason alone. And his fleeting moments of coherence hardly foreclosed a claim that his *Miranda* waiver was not knowing and intelligent—particularly without any investigation into

what medications he was on and how they affect cognition.[3] The state court's ruling to the contrary constituted an unreasonable application of *Strickland*, § 2254(d)(1), and Respondent fails to show otherwise.

B. Mr. Baxter is entitled to a remand.

On *de novo* review, the federal court is not limited to the state-court record. *Arvelo v. Sec'y, Fla. Dep't of Corr.*, 788 F.3d 1345, 1349 (11th Cir. 2015). Because Mr. Baxter "requested, but was denied, an evidentiary hearing" in both state and federal court, *id.* at 1349 n. 4, the correct remedy is to remand to allow him to "develop the factual bases of his claim," *Madison v. Comm'r, Ala. Dep't of Corr.*, 761 F.3d 1240, 1250 (11th Cir. 2014); *see Daniel*, 822 F.3d at 1280.

[3] Respondent's attempt to carve out counsel's failure to investigate the circumstances of the confession as a separate "claim" that is "unexhausted," AB.27, is meritless. This Court has held that ineffectiveness claims based on the failure to file a motion necessarily encompass failures to undertake steps to assess the motion's viability. *See, e.g.*, *Smith v. Dugger*, 911 F.2d 494, 498 (11th Cir. 1990) (failure to file motion deficient performance because it "was an unreasonable choice based on an inadequate investigation of the facts"). Regardless, Mr. Baxter's state motion and federal petition both argued that counsel's failure to move to suppress entailed an antecedent failure to investigate the confession's circumstances. *See* Doc.9-2 at 34 (highlighting ethical obligation of "thoroughness" and arguing counsel violated his "duty to review" the statement); Doc.23 at 32 (arguing counsel "failed to investigate" confession's circumstances).

Respondent argues Mr. Baxter "is not entitled to an evidentiary hearing" because he "could have attached" the interrogation video to his *pro se* federal habeas petition. AB.26 n.3. Putting aside that he was incarcerated and lacked access to the video file, attaching it would have been improper because it was not in the state-court record. *See Cullen v. Pinholster*, 563 U.S. 170, 181-82 (2011); *Arvelo*, 788 F.3d at 1348 (evidentiary hearing needed to consider interrogation recording). Mr. Baxter also seeks to develop other evidence that would have supported a motion, like hospital records and witness testimony. *See* OB.38-39.

Respondent's contention that Mr. Baxter fails *de novo* review on the current record—besides being premature under *Arvelo*, *Madison*, and *Daniel*—is meritless. Respondent's principal argument is, again, that a motion would have been "baseless" because Mr. Baxter cannot establish "mania." AB.26-27. As explained above, however, the "mania" standard is irrelevant to *Miranda* waiver claims.[4]

[4] Respondent also postulates other reasons counsel might not have filed a motion, including hypothesizing that counsel may have determined Mr. Baxter's confession was somehow *helpful* to him. AB.28. Respondent's conjectures are purely speculative; without an evidentiary hearing, counsel never testified as to why he did not move to suppress, or whether it resulted from a reasoned decision at all.

Respondent's argument that Mr. Baxter cannot show *Strickland* prejudice likewise fails. His confession was the strongest evidence against him and the only direct evidence he engaged in a common design with Oakley. There is at least a "reasonable probability" that, had it been suppressed, "the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. The meager circumstantial evidence Respondent cites—testimony Oakley was unfamiliar in the neighborhood and "sped off" when pursued, AB.30—was hardly compelling evidence he and Baxter acted together, and far from enough to be confident the jury would still have convicted had the confession been suppressed. *See Calhoun*, 92 F.4th at 1348 (*Strickland* prejudice "lesser" than preponderance, requiring only "enough possibility" of a different result that "confidence in the outcome is undermined").

Respondent's suggestion that Mr. Baxter would still have testified to the details of his confession even if it were suppressed, AB.29, is ludicrous. It is plain he testified solely to blunt the confession's impact. Indeed, he asserted under penalty of perjury he would not have testified had it been suppressed, Doc.9-2 at 35 & n.5, and there is certainly a reasonable probability that was true. Respondent's assertion the state

court "disbelieve[d]" that sworn averment, AB.29, is patently false; the state court never addressed it. *See* Doc.9-5 at 27.

III. Mr. Baxter's Sentence Violates The Eighth Amendment.

A. Review is *de novo*.

The state court did not determine whether life without parole (LWOP) is an excessive punishment for Mr. Baxter, eschewing any Eighth Amendment determination altogether because "the Legislature makes the law." Doc.10-2 at 864. That approach contravened decades of Supreme Court precedent, which makes clear that "no penalty is *per se* constitutional," *Solem v. Helm*, 463 U.S. 277, 290 (1983), even when "enacted by the Legislature," Doc.10-2 at 864. *See* OB.39-41.

Respondent does not deny this was the state court's express basis for rejecting Mr. Baxter's Eighth Amendment challenge. Nor does Respondent dispute such approach is contrary to Supreme Court law. AB.40. Nevertheless, Respondent contends that, despite the state court's explicit ground for its denial, the court must have *implicitly* "considered and rejected Baxter's Eighth Amendment claim on the merits" because it "defies belief" that a judge with "nearly a decade" of experience would have misunderstood the law so badly. AB.41-42. In essence, Respondent

argues the state court's rationale was *so* "wrongheaded," AB.41—*so* contrary to Supreme Court law—that it could not possibly have meant what it said, so this Court should ignore what it *actually* did and simply *presume* it analyzed the Eighth Amendment merits implicitly.

Respondent cites no authority for this bizarre approach to AEDPA deference, wherein state-court decisions that contravene the governing Supreme Court rule *too* squarely receive a presumption of correctness—an approach that would swallow the "contrary to" prong entirely. Respondent invokes the mantra that judges are "presumed to know the law," AB.42, but that presumption cannot overcome evidence the judge applied the *wrong* law. *See, e.g.*, *United States v. Ruiz-Terrazas*, 477 F.3d 1196, 1201-02 (10th Cir. 2007) (Gorsuch, J.) ("traditional[]" presumption inapplicable "when the record gives us reason to think" it is "misplaced"); *United States v. Banks*, 464 F.3d 184, 190 (2d Cir. 2006) (same).

Respondent suggests that, in declaring the "Legislature makes the law," Doc.10-2 at 864, the state court was merely "signaling" that proportionality analysis incorporates "deference" to legislative judgments. AB.41 (citing *United States v. Raad*, 406 F.3d 1322, 1323 (11th Cir. 2005)). That wishful reading bears little resemblance to what

the court actually said. Unlike in *Raad*, the state court did not say it was according the legislature "deference" in assessing the proportionality of Mr. Baxter's sentence. It said it was "mandated" to impose LWOP, no matter how "draconian" a penalty, because "the Legislature makes the law" and the court was merely "tasked with following" it. Doc.10-2 at 863-64. That was not a statement of deference. It was a statement of abdication—and one that ran afoul of the governing Supreme Court law.

Respondent also contends the court's nod to the fact Mr. Baxter had "successfully…preserved" his claim, Doc.10-2 at 864, showed it "recognized that judges may assess the validity of" legislative determinations, AB.41. But the court's recognition that a *higher* court could, in theory, grant Mr. Baxter's Eighth Amendment challenge did not mean it believed *it itself* could do so. Indeed, the court's very next sentence demonstrated the opposite: the court stated that, "right now" it was "here tasked with imposing the sentence" and that it was "mandated to sentence [him] to" LWOP. Doc.10-2 at 864.[5]

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[5] Respondent's claim that the court's reference to Mr. Baxter's "not unblemished" record reflected an implicit Eighth Amendment ruling, AB.41, is nonsensical. That remark occurred at the end of the hearing, long after the denial of the Eighth Amendment claim, when the court was announcing its sentence on the burglaries. Doc.10-2 at 872-73.

Because the state court "applied a rule that contradicts the governing" Supreme Court law, its decision was "contrary to" that law, and thus review is *de novo*. *Arvelo*, 788 F.3d at 1348; § 2254(d)(1). But even if AEDPA deference applied, Mr. Baxter would be entitled to relief. *See* OB.64. As the Supreme Court recently emphasized, "[g]eneral legal principles can constitute clearly established law for purposes of AEDPA," and "certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." *Andrew v. White*, 145 S. Ct. 75, 82 (2025) (cleaned up). The "Eighth Amendment principle that a sentence may not be grossly disproportionate to the offense" is just such a "clearly established" rule, and the "necessity to apply" it to Mr. Baxter's case is "beyond doubt." *Id.*

B. Mr. Baxter is entitled to relief.

1. Mandatory LWOP is unconstitutional as applied to the class of categorically low-culpability felony-murder defendants into which Mr. Baxter falls.

The Supreme Court's categorical-approach jurisprudence—namely, *Enmund v. Florida*, 458 U.S. 782 (1982), and *Tison v. Arizona*, 481 U.S. 137 (1987), as modified by *Graham*, 560 U.S. 48, and *Miller v. Alabama*, 567 U.S. 460 (2012)—makes clear that mandatory LWOP is

impermissible for the subset of felony-murder defendants who, like Mr. Baxter, cannot be sentenced to death under *Enmund* and *Tison* due to their categorically diminished culpability. *See* OB.42-52.

a. Respondent does not even cite *Enmund* or *Tison*, much less explain how mandatorily imposing the "harshest term of imprisonment," *Miller*, 567 U.S. at 474, on someone who cannot constitutionally be executed under *Enmund/Tison* is constitutional after *Graham* and *Miller*. Instead, Respondent attempts to sidestep the merits, claiming this argument was both "unexhausted" for AEDPA purposes and "unpreserved" below. AB.54-55. Respondent is wrong, for two reasons.

First, exhaustion and preservation are about claims, not arguments in support of claims. *See Harrington v. Richter*, 562 U.S. 86, 103 (2011) ("Under the exhaustion requirement, a habeas petitioner…must first attempt to present his claim in state court."); *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below."). A "claim," in the habeas context, is "an asserted federal basis for relief from a state court's judgment." *In re Everett*, 797 F.3d 1282, 1288 (11th Cir. 2015) (cleaned

up). "[N]ew legal arguments in support of a prior claim" do not "create a new claim"; rather, the claim "remains the same" so long as the "basic thrust or gravamen of" the legal basis is the same. *Id.* (quoting *In re Hill*, 715 F.3d 284, 294 (11th Cir. 2013) ("new legal argument in support of the same Eighth Amendment claim" not a new "claim," where the "core legal basis for the claim remains that [petitioner's] execution would violate the Eighth…Amendment[]" due to his intellectual disability)).

Here, Mr. Baxter's "claim" is, and has always been, that imposing "mandatory life sentences" under these circumstances "violates his Eighth Amendment rights." Doc.10-2 at 861-62; *see* Doc.9-1 at 76-84; Doc.23 at 8-9. His citation to the Supreme Court's categorical-approach jurisprudence is not a distinct claim but simply a legal argument in support of that Eighth Amendment claim, based on a particular methodology for assessing whether a sentence is unconstitutionally excessive. *See Graham*, 560 U.S. at 59; OB.41-42. But the "core legal basis for the claim remains" that his mandatory LWOP sentence violates the Eighth Amendment. *Hill*, 715 F.3d at 294.

Second, even if Mr. Baxter's categorical-approach argument were a separate "claim" that needed to be exhausted and preserved—a

proposition Respondent cites no support for—he did so. His categorical-approach argument, unlike his gross-disproportionality argument, hinges on the mandatory nature of his sentence. *See* OB.42-52. And he repeatedly made clear, in both state court and below, that he challenges not just the disproportionality of LWOP as applied to him but the mandatory nature of Florida's sentencing scheme.[6] As he urged in his *pro se* petition below, it was in part the sentencing court's "inability…to consider" his "complete non-involvement in" the fatal accident, and its "lack of discretion in imposing any sentence other tha[n] mandatory [LWOP]," that makes his sentence unconstitutional. Doc.23 at 9.

Those arguments are, in substance, the same ones he makes here. That he did not cast them previously as "categorical-approach" arguments, or cite the same cases, is irrelevant. This Court does not "demand exact replicas" or "carbon copies" of the arguments habeas petitioners "presented to the state courts." *Kelley v. Sec'y, Dep't of Corr.*,

[6] *See* Doc.10-2 at 861 ("the mandatory minimum, as it's applied in these cases…is unconstitutional"); Doc.9-1 at 76 ("appellant's mandatory life sentences…[are] unconstitutional as applied to him"); *id.* at 84 (requesting "resentencing without regard to the mandatory life sentence"); Doc.23 at 9 ("Petitioner challenges the imposition of a mandatory term of [LWOP].").

377 F.3d 1317, 1344 (11th Cir. 2004). Rather, it permits petitioners to "clarify the arguments presented to the state courts on federal collateral review" so long as they "remain unchanged in substance." *Id.*

That Mr. Baxter *also* argued that LWOP is grossly disproportionate "as applied to him," AB.55, does not mean he *only* presented that argument. Indeed, his persistent emphasis on the "mandatory" nature of his sentence makes clear he was *not* solely making a proportionality argument: the Supreme Court has "squarely establishe[d] that the mandatory nature of a non-capital penalty is irrelevant for proportionality purposes." *United States v. Farley*, 607 F.3d 1294, 1343 (11th Cir. 2010) (citing *Harmelin v. Michigan*, 501 U.S. 957, 994-95 (1991)). Mr. Baxter's consistent challenge to the mandatory aspect of his sentence "remain[s] unchanged in substance," *Kelley*, 377 F.3d at 1344, and this Court should reject Respondent's attempt to avoid it simply because his appellate counsel has refined the arguments in support of it.

b. On the merits, Respondent has little to say. His principal tactic is to mischaracterize Mr. Baxter's argument as a "quasi-facial challenge," citing a case irrelevant to the Eighth Amendment. AB.54 (citing *McGuire v. Marshall*, 50 F.4th 986 (11th Cir. 2022)). Under that framing,

Respondent claims, Mr. Baxter must show LWOP is disproportionate for everyone in the *Enmund/Tison* class. AB.56-57.

Mr. Baxter's argument, however, is not a "quasi-facial challenge" akin to *McGuire*'s Ex Post Facto challenge. It is a categorical argument akin to *Miller*'s Eighth Amendment challenge. *Miller* did not hold LWOP disproportionate for every juvenile convicted of murder; indeed, the Court expressly declined to do so. 567 U.S. at 479. Rather, *Miller* held that *mandatory* LWOP, without individualized sentencing, is unconstitutional as applied to juveniles because it "poses too great a risk of disproportionate punishment." *Id.* Mr. Baxter's argument is that the same applies to the class *Graham* identified as "categorically less deserving of the most serious forms of punishment." 560 U.S. at 69. That argument falls squarely within *Miller*'s framework.

Respondent also contends that because *Graham* and *Miller* "dealt with *juvenile* offenders," AB.58, they are irrelevant beyond that context. Respondent ignores that *Graham* derived its starting premise—that "defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment," 560 U.S. at 69—from cases involving adults, including *Enmund* and

Tison. And of course, *Graham*'s transformative observations about LWOP's unique severity and its similarity to capital punishment were not restricted to juveniles. *See* OB.47. Respondent ignores those aspects, too, invoking *Furman v. Georgia*, 408 U.S. 238 (1972), for the notion that capital punishment is qualitatively different from LWOP, AB.61, nevermind that *Graham* "eviscerate[d] that distinction," 560 U.S. at 103 (Thomas, J., dissenting); *see id.* ("'Death is different' no longer.").

Finally, Respondent argues Mr. Baxter falls outside the class *Graham* deemed "categorically less deserving of the most serious forms of punishment," *id.* at 69, because his jury found the victims' deaths a "reasonably foreseeable" consequence of the felony. AB.59 n.7. Respondent conflates the concept of foreseeability inherent in *every* felony-murder conviction—the legal fiction that "the possibility of bloodshed" is "generally foreseeable" in the commission of certain felonies, *Tison*, 481 U.S. at 151—with actual intent to kill or reckless disregard. The Supreme Court rejected this precise conflation in *Tison*, noting that it "amounts to little more than a restatement of the felony-murder rule itself," and that if legal foreseeability were the relevant

factor, "Enmund himself" could have been constitutionally executed. *Id.; see id.* at 164 (Brennan, J., dissenting) (same).

What matters, for Eighth Amendment purposes, is not whether harm was "foreseeable" in a legal sense but whether the person actually killed, intended to kill, or acted with "reckless indifference to human life." *Id.* at 158. Respondent does not and cannot contend Mr. Baxter possessed any of these culpable mental states. As such, he falls squarely in the class *Graham* deemed "categorically less deserving of the most serious forms of punishment." 560 U.S. at 69.

2. LWOP is unconstitutional applied to Mr. Baxter.

Mr. Baxter's LWOP sentence is also unconstitutional because it is grossly disproportionate to his conduct and culpability. The opening brief explained why all three factors the Supreme Court has established to assess a sentence's disproportionality weigh in his favor.[7] OB.52-64.

[7] Respondent argues the three-factor test is not "clearly established" and therefore "inapplicable on AEDPA review." AB.47. Because *de novo* review applies, that argument is irrelevant. Regardless, it is misplaced. For one, *Graham* treated the three-factor test as "controlling." 560 U.S. at 60. But even if its status were in doubt, the factors are simply "objective criteria" for assessing a sentence's proportionality. *Solem*, 463 U.S. at 292. Nothing precludes this Court from considering such relevant factors in assessing whether a state court unreasonably applied Eighth Amendment proportionality principles.

Respondent again offers little response. Instead, Respondent attempts to evade the merits by recasting this as a "recidivism" case. Falsely characterizing Mr. Baxter as a "recidivist offender," Respondent argues his LWOP sentence is permissible because the Supreme Court has upheld LWOP for persons convicted under state recidivism laws. AB.42-45 (citing, *inter alia*, *Ewing v. California*, 538 U.S. 11 (2003), and *Rummel v. Estelle*, 445 U.S. 263 (1980)).

Mr. Baxter, however, was not charged or sentenced as a recidivist—nor could he have been under Florida law. Contrary to Respondent's false assertion, Mr. Baxter had never "previously been incarcerated." AB.40.[8] And his sole prior at the time of arrest was a single count of third-degree grand theft, a nonviolent property crime for which the court withheld adjudication and gave him six months' probation.[9] *See* Doc.9-1 at 28-29;

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[8] *See* FDOC, Corrections Offender Network, Offender Search: Sadik Baxter, "Incarceration History," https://pubapps.fdc.myflorida.com/offenderSearch/detail.aspx?Page=Detail&DCNumber=M81116&TypeSearch=AI (last visited Feb. 21, 2025).

[9] Respondent claims Mr. Baxter also "had previously been convicted for driving on a suspended license," citing a document included in Respondent's Supplemental Appendix. AB.45 (citing Resp. App. 14). That document is not part of the record, nor has Respondent asked this Court to enlarge the record with it or to take judicial notice of its contents. Regardless, it does not support Respondent's claim, as it shows that Mr. Baxter's alleged suspended-license adjudication occurred *after* his arrest

Doc.10-1 at 3; Doc.10-2 at 523; *see generally* Fla. Stat. § 948.01(b)(2). That background did not qualify him for a recidivism enhancement in Florida, *see* Fla. Stat. §§ 775.084, 775.082(9), and he was, consequently, neither charged nor sentenced as a recidivist, Doc.9-1 at 8-11, 22-54. That the Court has upheld LWOP for recidivists is thus wholly irrelevant to the Eighth Amendment question here.

Respondent makes little attempt to justify LWOP as a constitutionally proportionate sentence *for Mr. Baxter*. On the threshold factor—"comparing the gravity of the offense and the severity of the sentence," *Graham*, 560 U.S. at 60 (cleaned up)—Respondent observes he "was convicted of *first-degree felony murder*," AB.48, like that alone resolves the issue. But the relevant question is Mr. Baxter's "own conduct" and "*his* culpability," not the "disproportionality of" LWOP "as a penalty for murder" in the abstract. *Enmund*, 458 U.S. at 798.

Respondent does not contest that Mr. Baxter's culpability for the victims' accidental deaths was as attenuated as imaginable, nor that his

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in this case, not before. Resp. App. 14. And driving with a suspended license is a misdemeanor, Fla. Stat. § 322.34(2), so such adjudication would not have made him a "recidivist offender" anyway. Nor would arrests not resulting in a conviction. *See* AB.4 (citing arrests).

LWOP sentence derived from something totally random and outside his control: that it was Oakley, and not the police or another driver, who hit them. Respondent argues his culpability would be lower in those circumstances because he was not "acting in concert with" those actors. AB.50. But, of course, he was not "acting in concert" with Oakley either when the accident occurred; his involvement with—and ability to influence—Oakley ended almost twenty minutes earlier, and miles away.

On the intrajurisdictional comparison, Respondent does not address Mr. Baxter's argument that his conduct pales relative to the violent offenders and dangerous recidivists Florida typically reserves LWOP for. *See* OB.58-59. Instead, Respondent makes the perplexing claim that his predicate offense—unarmed burglary of an unoccupied conveyance—is equivalent, "[i]n terms of the danger posed to third parties," to other felony-murder predicates like "home-invasion robbery" and "escape" from a penal institution. AB.49. But stealing items from unlocked, unoccupied vehicles is plainly less serious than breaking into a dwelling and robbing its occupants or escaping from prison, as Florida law recognizes. *See* Fla. Stat. §§ 775.082(3)(d), 944.40 (escape is a second-degree felony punishable by up to 15 years—three times the maximum

for third-degree burglary of a conveyance); *id.* §§ 775.082(3)(b), 812.135(2) (unarmed home-invasion robbery is a first-degree felony punishable by up to 30 years). That Mr. Baxter, with his minimal conduct and culpability, received the same "penultimate sentence" as someone who kills another while robbing their home or escaping from prison is "indication" that his sentence "may be excessive," not justification for upholding it. *Solem*, 463 U.S. at 303, 291.

Finally, on the interjurisdictional comparison, Respondent cites statistics about the prevalence of LWOP as a penalty for murder. AB.50. The question, however, is not how many states have LWOP generally but how many would give that extreme sentence to someone in Mr. Baxter's circumstances. *See Graham*, 560 U.S. at 60; *Enmund*, 458 U.S. at 792.[10]

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[10] Respondent misunderstands the purpose of Mr. Baxter's Attachment A, which is not to show "Florida is out of step" with other states, AB.51, but that, in the 30 states identified, he would not have qualified for a felony-murder charge and thus couldn't have received LWOP even if they allowed it. Respondent's chart purporting to show "states where car burglary is a qualifying predicate," Resp. App. 7-8, is less useful, as several of them either define "car burglary" to exclude Mr. Baxter's conduct (California, West Virginia); have a *mens rea* element he wouldn't meet (New Mexico); or would not impose LWOP here (Kansas, Idaho, Illinois, Tennessee). *See* OB Attachments A-B.

Respondent does not deny that number is miniscule: only six other states would even *permit* LWOP for someone in Mr. Baxter's position, and in four of them, LWOP would be discretionary. OB.61-62. Respondent appears to agree with that tally, albeit citing different states. AB.51-52 & n.6.[11] Respondent's claim that Mr. Baxter must show "that no state anywhere" would permit LWOP in these circumstances, AB.52, is meritless. The Supreme Court has never demanded total abolishment of a sentencing practice to determine that a "national consensus has developed against it," and has deemed a practice used in eleven states "exceedingly rare," *Graham*, 560 U.S. at 65, 67 (cleaned up), and eight a "small minority of jurisdictions," *Enmund*, 458 U.S. at 792.

In sum, every relevant consideration confirms that death-by-incarceration is a grossly-disproportionate sentence for someone whose only conduct was stealing from unlocked, unoccupied, parked cars, and who was convicted of felony murder solely because his associate in that

[11] Mr. Baxter could not have received LWOP in five of the six states Respondent lists. AB.51-52 & n.6. Connecticut and Delaware have *mens rea* elements that would exclude him; he has none of the aggravating circumstances that would trigger LWOP in Illinois; and his conduct is not a predicate for felony murder in South Dakota or West Virginia. *See* OB.61-62 n.14 & Attachments A-B.

low-level offense subsequently caused a fatal traffic accident he was not involved in. Justice demands Mr. Baxter be resentenced.

CONCLUSION

This Court should reverse and remand for further proceedings.

Dated: February 21, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

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s/ Christine A. Monta
Christine A. Monta

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I hereby certify that on February 21, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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