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 OPENING BRIEF

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned hereby certifies the following list of trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that may have an interest in the outcome of this appeal:

Ayalyne, Carolyne (Defense Counsel)

Bandell, Lanie B. ([former] Assistant State Attorney)

Baxter, Sadik (Appellant)

Bloom, The Honorable Beth (U.S. District Judge)

Callahan, Daniel (Defense Counsel)

Ciklin, The Honorable Cory J. (Fourth District Judge)

Conner, The Honorable Burton C. (Fourth District Judge)

DeSousa, Jeffrey P. (Chief Deputy Solicitor General)

Dighe, Utpal (Defense Counsel)

Dixon, Ricky, Secretary, Florida Department of Corrections (Appellee)

Egber, Mitchell ([retired] Assistant Attorney General)

Forrester, Nathan Andrew (Senior Deputy Solicitor General)

Gerber, The Honorable Jonathan D. (Fourth District Judge)

Kantor, Bradley Jason (Victim)

Kuntz, The Honorable Jeffrey T. (Fourth District Judge)

Levenson, The Honorable Jeffrey R. (17th Circuit Judge)

Lewis, James S. (Defense Counsel)

Malave, Melanie (Defense Counsel)

Marsh, Janet Lynn (Victim)

Merrigan, The Honorable Edward H. (17th Circuit Judge)

Monta, Christine A. (Counsel for Petitioner-Appellant)

Moody, Ashley (Attorney General)

Oakley, Obrian Ricardo (Co-Defendant)

Ostapoff, Tatjana ([retired] Assistant Public Defender)

Perlman, The Honorable Sandra (17th Circuit Judge)

Raudt, Kevin (Defense Counsel)

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Rosen, Samantha (Assistant State Attorney)

Rosenthal, The Honorable Lynn (17th Circuit Judge)

Russo, Joseph William (Victim)

Stone, Kathleen Engelhardt (Victim)

Stone, Charles Russell (Victim)

Valuntas, Richard (Senior Assistant Attorney General)

Warner, The Honorable Martha C. (Fourth District Judge)

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: August 2, 2024

Respectfully Submitted,

s/ Christine A. Monta
Christine A. Monta

STATEMENT REGARDING ORAL ARGUMENT

Mr. Baxter respectfully requests oral argument. This federal habeas appeal presents three significant constitutional issues going to the validity of both Mr. Baxter's convictions and his mandatory life-without-parole sentence. The district court granted Mr. Baxter a certificate of appealability (COA) on his Eighth Amendment challenge, and this Court expanded the COA to include two Sixth Amendment ineffective-assistance-of-counsel claims. 11th Cir. Doc.35. Thus, Mr. Baxter has already made a "substantial showing of the denial of a constitutional right" on these claims. 28 U.S.C. § 2253(c)(2) (standard for granting a COA). Oral argument would assist the Court in understanding the factual and legal bases for Mr. Baxter's claims and why his petition should be granted.

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INTRODUCTION

Sadik Baxter was sentenced, at age 26, to spend the rest of his life in prison because of a fatal car accident he did not cause, intend, or play any role in bringing about. He received that sentence under Florida's first-degree felony-murder statute, which mandates life imprisonment without parole for any participant in a felony where a co-defendant causes a death, regardless of whether the participant himself caused, intended, or acted recklessly to bring about the death.

Here, the underlying felony was entering unlocked, unoccupied parked cars with intent to commit theft—a third-degree property offense and the lowest-level felony in Florida. The fatal accident occurred after police initiated a high-speed pursuit of Mr. Baxter's co-defendant through a residential neighborhood, in violation of their own policies prohibiting high-speed chases for non-violent property crimes. Mr. Baxter was not involved in the chase nor present for the accident—indeed, he had been sitting in police custody miles away for over ten minutes when the tragic accident occurred. Yet, the State of Florida prosecuted him for the victims' deaths as a murderer—a charge that, upon conviction, mandated life imprisonment without any possibility of release.

This federal habeas appeal presents three significant constitutional issues warranting relief. Mr. Baxter's appointed lawyer committed two grave pretrial errors of constitutional magnitude that all but assured his felony murder conviction. And Mr. Baxter's mandatory life-without-parole sentence for accidental deaths entirely outside his control constitutes cruel and unusual punishment. This Court should correct the continued injustice of Florida's incarceration of Mr. Baxter until his death in violation of his Sixth and Eighth Amendment rights.

STATEMENT OF JURISDICTION

The district court denied Mr. Baxter's habeas petition, brought under 28 U.S.C. § 2254, on April 26, 2023, but granted a certificate of appealability (COA) on his Eighth Amendment challenge. Doc.31. After his timely motion to amend the judgment was denied June 5, 2023, Mr. Baxter filed a timely notice of appeal July 5, 2023. Doc.33, 34. He moved this Court to expand his COA to include three ineffective-assistance-of-counsel claims, which this Court granted in part. 11th Cir. Doc.23, 35. This Court has jurisdiction under 28 U.S.C. §§ 1291 and 2253(a).

STATEMENT OF ISSUES

I. Whether trial counsel provided constitutionally ineffective plea advice, in violation of the Sixth Amendment, by failing to advise Mr. Baxter that pleading guilty to burglary would concede the only contestable elements of felony murder.

II. Whether trial counsel's failure to make any effort to suppress Mr. Baxter's videotaped police statement—which was taken while he was heavily medicated and was the State's only evidence establishing a common design to commit burglary—constituted ineffective assistance of counsel in violation of the Sixth Amendment.

III. Whether Mr. Baxter's mandatory life-without-parole sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment.

STATEMENT OF THE CASE

I. Factual Background

In the early morning hours of Sunday, August 5, 2012, Sadik Baxter and O'Brian Oakley drove to a residential neighborhood in Florida after

a night at a casino. Doc.10-2 at 621-26.[1] Needing money for a chronic medical issue, Mr. Baxter decided to exit Oakley's car and check if parked vehicles were unlocked so he could search them for loose change or items to sell. *Id.* at 627-35, 670. A resident, Bradley Kantor, spotted Mr. Baxter enter his own parked SUV and called 9-1-1. *Id.* at 348-53. Police arrived within minutes, arrested Mr. Baxter, and placed him, handcuffed, in the back of a police cruiser. *Id.* at 356-57.

After Mr. Baxter's arrest, Kantor noticed Oakley drive past in a silver Infiniti and pointed it out to police because it was "not a familiar car" in the neighborhood. *Id.* at 347, 357-58, 362-63, 392, 714. Sheriffs' deputies then initiated a high-speed chase of Oakley through the residential neighborhood, in violation of their policies prohibiting high-speed chases for non-violent property crimes. *Id.* at 393, 415, 591. After circling the neighborhood twice—at speeds exceeding 80 miles per hour—the chase exited onto a main road and continued several more miles until

[1] "Doc.__ at __" refers to the ECF entry on the district court docket and the ECF page number(s) within that entry.

Oakley collided with another vehicle and crashed into two passing cyclists, tragically killing them instantly.[2] *Id.* at 343, 393-400, 413, 436.

Although Mr. Baxter had been detained in the back of a police car for over ten minutes when the tragic accident occurred, *id. at* 392, 401, the State indicted him on two counts of first-degree felony murder for the cyclists' deaths, Fla. Stat. Ann. § 782.04(1)(a), and five counts of unarmed burglary of an unoccupied conveyance for rummaging through parked cars, *id.* §§ 810.02(1), (4)(b); Doc.9-1 at 8-11.

II. Procedural History

A. State Proceedings

1. Mr. Baxter enters open pleas to burglary without being advised that doing so would concede the only contestable elements of felony murder.

Several weeks before trial, the parties convened to discuss a potential plea. Defense counsel indicated that Mr. Baxter had rejected an informal plea offer that would have required him to testify against

[2] The cyclists' families later brought wrongful-death suits against Broward County alleging that the deputies' negligent high-speed chase was the proximate cause of their loved ones' deaths. *See Amelkin v. Israel*, No. 17-cv-61479 (S.D. Fla.); *McConnell v. Israel*, No. 13-021542 (Broward Cnty.). The County settled both cases for a substantial sum. *Broward Sheriff paid out $400,000 to settle bicyclists' wrongful death lawsuits*, Libertarian Party of Broward County (2018), https://web.archive.org/web/20231002181613/https://broward.lpf.org/local-news/.

Oakley; as Mr. Baxter later explained, he could not do so out of fear for his family's and six-year-old daughter's safety. Doc.10-2 at 10; *see* Doc.9-2 at 131. Thus, he would be proceeding to trial on the felony-murder counts. Doc.10-1 at 2; *see id.* at 9, 16; Doc.10-2 at 9-10. Counsel stated, however, that Mr. Baxter wished to enter open pleas—that is, guilty pleas without an agreement—to the burglary charges. Doc.10-1 at 2-3.

The court conducted a standard colloquy, which focused on Mr. Baxter's understanding of the burglary counts and his sentencing exposure for them. *See id.* at 12-21. The colloquy did not, however, ask whether he understood, or whether his lawyer had explained, the consequences pleading guilty to burglary would have for the felony-murder counts, nor did the judge explain those consequences himself. *See id.* at 11-12. The standard plea form Mr. Baxter signed also did not inform him of those consequences. Doc.9-1 at 16-17.

The court accepted Mr. Baxter's open pleas to the burglary counts and set the felony-murder counts for trial. Doc.10-1 at 26-27. Although the judge remarked at the plea hearing that Mr. Baxter had "a very defensible case" as to felony murder, *id.* at 28, on the morning of trial, the judge stated there was a "good possibility" the jury would find him

guilty given that he "already admitted that [he] committed burglary of a conveyance," Doc.10-2 at 8. In his federal habeas petition, Mr. Baxter attested under penalty of perjury that this was the first time he was ever informed his burglary pleas might have consequences for the felony-murder counts. Doc.23 at 18, 40.

2. Mr. Baxter is convicted of felony murder based on his open pleas and a statement he gave detectives while heavily medicated.

Mr. Baxter's trial began with two stipulations: first, that he committed, and had pled guilty to, the five charged burglary counts; and second, that the victims named in the indictment were, in fact, dead. Doc.10-2 at 336-37; *see* Doc.9-3 at 3, 5. Those elements having been conceded, the sole issue at trial was whether the deaths were a "reasonably foreseeable consequence" of a "common design" between Baxter and Oakley to burglarize unoccupied vehicles, or instead resulted from an "independent act" of Oakley.[3] Doc.10-2 at 775-76.

[3] The standard instructions required the jury to find: (1) the victims were dead; (2) the deaths occurred while Baxter or an accomplice was "escaping from the immediate scene of a burglary"; and (3) both Baxter and Oakley were principals to the burglary. Doc.10-2 at 773. The two stipulations effectively conceded all three elements. However, Mr. Baxter requested and received an "independent act" instruction, which stated that, if Oakley's flight was "outside of and not a reasonably

The State's evidence that Baxter and Oakley had formed a "common design" to commit burglary came entirely from Mr. Baxter's own admissions, by way of an interrogation statement and his pleas:

First, the State introduced a video-recorded police statement Mr. Baxter gave on the afternoon of his arrest, while he was heavily medicated following treatment at a hospital. In it, Mr. Baxter described how, after he and Oakley arrived in the neighborhood, he began trying cars to see if they were unlocked; entered the four or five that were; and removed items from them and put them into Oakley's car. *Id.* at 627-33, 660-61, 671-73. Although he stated repeatedly that this was not "planned" but something he did spur-of-the-moment, Mr. Baxter eventually relented to the detectives' characterization of a "plan." *Id.* at 626-27, 637, 639-40, 668-70. The State relied heavily on Mr. Baxter's statement in closing to establish a common design to commit burglary with Oakley. *Id.* at 801 ("Mr. Baxter, did he have an intent to commit a

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foreseeable consequence of the common design or unlawful act [Baxter] contemplated," Baxter was not guilty of felony murder. *Id.* at 775-76.

burglary along with Mr. Oakley? You…saw it…on the DVD. Yeah, we planned it."); *see also id.* at 793-95.[4]

Second, the State relied on Mr. Baxter's burglary pleas, to which the parties had stipulated and which connected him circumstantially to Oakley insofar as items from vehicles he pled to burglarizing were later recovered from Oakley's Infiniti. *See id.* at 536-38; Doc.9-3 at 3. The State thus argued in closing that Mr. Baxter "admitted through stipulation," *i.e.*, his pleas, that he and Oakley "planned a burglary of cars." Doc.10-2 at 793; *see also id.* at 798 ("all the stuff in [Oakley's] car" showed that Oakley and Baxter were acting together).

Without Mr. Baxter's statement and pleas, the State would have had no evidence of a "common design" to commit burglary with Oakley. Although Kantor testified to seeing Mr. Baxter enter and remove items from his own parked SUV, Kantor did not see Mr. Baxter burglarize any other vehicles; he did not witness Mr. Baxter interact with Oakley or the

[4] To blunt the impact of his confession, Mr. Baxter took the stand in his own defense, testifying, as he had initially told the detectives, that the burglaries were unplanned. Doc.10-2 at 709, 714-15. On cross-examination, however, Mr. Baxter again assented to the State's characterization that he and Oakley "formulated a plan to commit burglaries" and "both joined in that plan." *Id.* at 728; *see also id.* at 733.

Infiniti; and his own missing items—loose change and sunglasses—were not recovered from Oakley's car. Doc.10-2 at 346-49, 360-63, 536-38. Thus, Kantor's testimony did not establish any connection between Baxter and Oakley, and the State did not call anyone else who saw Baxter commit burglary, much less act in concert with Oakley. Mr. Baxter's confession and pleas were thus the crux of the State's case against him.

After a three-day trial, the jury deliberated less than an hour before returning a guilty verdict on both felony-murder counts. *Id.* at 842-44.

3. The state court denies Mr. Baxter's constitutional challenge to his sentence on the ground that the "Legislature makes the law."

At the start of Mr. Baxter's sentencing hearing, his attorney submitted a victim-impact letter from the family of one of the victims. Doc.10-2 at 857-58. Although the letter was not included in the federal habeas record, the family has made it public via a journalist. *See* Felony Murder Reporting Project, Sadik Baxter, https://felonymurderreporting.org/stories/sadik-baxter/ ("Amelkin Victim Impact Statement"). In it, the victim's children implored the court to "impose a less stringent sentence on Mr. Baxter," stating that they did not believe he should have been prosecuted for their father's death; that "the events that led to [his] death

were as random and fleeting…as if he were struck by lightning"; and that sentencing Mr. Baxter to life without parole (LWOP) "amounts to cruel and unusual punishment." *Id.*; *see also* Sarah Stillman, *Sentenced to Life for an Accident Miles Away*, THE NEW YORKER, at 31 (Dec. 18, 2023) (describing the family's letter), *available at* https://www.newyorker.com/magazine/2023/12/18/felony-murder-laws.

Mr. Baxter's counsel then challenged imposition of the statutorily mandated LWOP sentence as a violation of Mr. Baxter's due process and Eighth Amendment rights. Doc.10-2 at 861-62. Counsel observed that a jury in the same courthouse had recently recommended LWOP—in lieu of death—for a man who shot a Dunkin' Donuts patron in cold blood.[5] *Id.* at 860. Counsel urged that it was "fundamentally unfair" to give Mr. Baxter the same sentence just because his accomplice in a minor property crime "went on a high speed chase and killed two people" while he was sitting handcuffed miles away. *Id.* at 860-61.

[5] The case counsel referenced involved a violent armed-robbery spree by a gang ringleader resulting in two execution-style murders. *See Jurors to Deliberate Sentence in 'Dunkin' Donuts' Murder Case Wednesday*, CBS NEWS (June 3, 2014), https://www.cbsnews.com/miami/news/sentencing-day-in-dunkin-donuts-murder-case/.

The State responded that the "Legislature has set out the laws," and that the enumerated felonies in Florida's felony-murder statute "are there for a reason, because they're inherently dangerous." *Id.* at 862. The State also noted it had been "willing to use [its] prosecutorial discretion" and drop the murder charges in exchange for Mr. Baxter testifying against Oakley but that Mr. Baxter rejected that proposal. *Id.* at 862-63; *see also id.* at 859-60 (defense counsel observing that, had Baxter agreed to assist the prosecution, it likely "would have ultimately resulted in the murder charges being nol-prossed").

The court recognized that "there are different views as to the draconian nature of the penalty," *id.* at 863—referencing the victim's family's letter on Mr. Baxter's behalf, *see id.* at 859—but concluded it lacked authority to grant Mr. Baxter's constitutional challenge because "the Legislature makes the law," *id.* at 863-64; *id.* at 864 ("I'm tasked with following what the law is, and the law in itself, good, bad, or indifferent, is enacted by the legislature."). The court noted Mr. Baxter had preserved the issue and that "we all agree" Mr. Baxter's "involvement...was not…significant," but that it was nonetheless "mandated to sentence [him] to life in prison." *Id.*

The court sentenced Mr. Baxter to eight years for the burglaries and mandatory LWOP for the felony-murder counts. *Id.* at 872-73; Doc.9-1 at 22-54. Mr. Baxter raised his Eighth Amendment challenge on direct appeal. Doc.9-1 at 76-83. The state appellate court affirmed per curiam without a written opinion. Doc.9-1 at 138.

4. The state court issues a blanket denial of Mr. Baxter's post-conviction claims.

i. Rule 3.850 Motion

Mr. Baxter moved for postconviction relief under Florida Rule of Criminal Procedure 3.850. Doc.9-2 at 2-41. His amended Rule 3.850 motion raised two ineffective-assistance-of-counsel claims relevant here:

First, Mr. Baxter argued that his trial counsel rendered constitutionally ineffective plea advice by failing to advise him that pleading guilty to burglary would concede the principal elements of felony murder, leaving just one element for the State to prove—the victims' deaths, which were undisputed. Doc.9-2 at 10-11, 17-20. Mr. Baxter attested under penalty of perjury that his lawyer "failed to discuss these ramifications with him," *id.* at 17, and that, had counsel done so, he would not have pled to burglary but would have proceeded to trial on all counts, *id.* at 20, 40; *see also id.* at 10-11, 13-14, 17-20.

Second, Mr. Baxter argued that trial counsel was constitutionally ineffective for failing to move to suppress his confession on the ground that his waiver of rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), was not knowing and intelligent. Doc.9-2 at 33-36. Mr. Baxter noted he informed the detectives repeatedly that his "ability to understand what was happening…was impaired" due to medication. *Id.* at 34. Mr. Baxter argued this impairment rendered him unable to understand his rights and "the consequences of his decision to abandon them," and that, had counsel moved to suppress, it likely would have been granted. *Id.* at 35. Mr. Baxter urged that the failure prejudiced him because his confession was "the only evidence… directly linking" him to Oakley, other than his trial testimony, which, he asserted under penalty of perjury, he would not have given had his confession been suppressed. *Id.* at 35 & n.5, 40.

Mr. Baxter requested an evidentiary hearing on each claim. *Id.* at 20, 36, 40. He moved again for a hearing eight months later, after the State failed to respond to his motion. *See* Doc.9-1 at 2 (docket entry #256); Doc.9-6 at 154.

ii. The State's Response

The State filed its response shortly after Mr. Baxter reiterated his request for a hearing. Doc.9-5 at 2-30; *see* Doc.9-6 at 154. On the plea-advice claim, the State did not contest Mr. Baxter's sworn assertions that his lawyer did not advise him that pleading guilty to burglary would concede elements of felony murder or that, had he understood those consequences, he would not have pled. Instead, the State argued that pleading served a "purpose" at trial of establishing Mr. Baxter accepted responsibility for the burglaries while also "separat[ing] himself" from Oakley's "decisions and actions." Doc.9-5 at 15.

Regarding the confession, the State acknowledged Mr. Baxter told the detectives "on multiple occasions" he was under the influence of medication and that his "repeated claims of impairment caused the detectives to question" his mental clarity. *Id.* at 25. Nevertheless, the State argued counsel "would not have [had] a good faith basis" to move to suppress Mr. Baxter's interrogation statement because the transcript of it "clearly showed he was not impaired." *Id.* at 27.

iii. State Court Decision

Five days after the State filed its response, the state court issued a blanket denial of all Mr. Baxter's claims "[f]or the reasons articulated in the State's response." Doc.9-6 at 141. The state appellate court affirmed per curiam, without a written opinion. Doc.9-6 at 196.

B. Federal Proceedings

Mr. Baxter filed a *pro se* federal habeas petition. Doc.23 at 8-10. The district court denied the petition but granted Mr. Baxter a COA on the Eighth Amendment claim, "agree[ing] that the life sentences in this case were harsh." Doc.31 at 9. This Court expanded Mr. Baxter's COA to include the two ineffective-assistance claims discussed above.

III. Standard of Review

This Court reviews *de novo* the denial of a habeas petition. *Sears v. Warden GDCP*, 73 F.4th 1269, 1279 (11th Cir. 2023). Where, as here, the state court denied the constitutional claim on the merits, the federal court reviews the state court's decision under the standard set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Id.* To grant habeas relief under AEDPA, the federal court must find that the state court's adjudication resulted in a decision that was either (1) "contrary to, or involved an unreasonable application of, clearly

established" Supreme Court law, or (2) "based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d). In making this assessment, the federal court is "limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

Once a federal court determines that either § 2254(d)(1) or (d)(2) is met, however, the state-court decision is no longer entitled to AEDPA deference; rather, the federal court "must undertake a *de novo* review of the record" to determine the merits of the claim. *Madison v. Comm'r, Ala. Dep't of Corr.*, 677 F.3d 1333, 1339 (11th Cir. 2012); *see Panetti v. Quarterman*, 551 U.S. 930, 948 (2007); *Calhoun v. Warden, Baldwin State Prison*, 92 F.4th 1338, 1346-49 (11th Cir. 2024). In such cases, the federal court is no longer limited to "the facts developed in the state court record." *Daniel v. Comm'r, Ala. Dep't of Corr.*, 822 F.3d 1248, 1280 (11th Cir. 2016). Where a petitioner requested, but was denied, an evidentiary hearing in state court and the facts alleged would, if true, entitle him to relief, this Court must remand for an evidentiary hearing to allow him to develop the factual basis for his claim. *Id.*; *Arvelo v. Sec'y, Florida Dep't of Corr.*, 788 F.3d 1345, 1349 (11th Cir. 2015); *Madison v. Comm'r, Ala. Dep't of Corr.*, 761 F.3d 1240, 1250 (11th Cir. 2014).

SUMMARY OF ARGUMENT

I. Mr. Baxter established both elements of his ineffective-plea-advice claim under *Hill v. Lockhart*, 474 U.S. 52, 57-58 (1985). Trial counsel's failure to advise him that pleading guilty to burglary would concede the only contestable elements of felony murder—a critical consequence of his plea decision—was objectively unreasonable. And Mr. Baxter attested under penalty of perjury that he would not have pled to the burglaries had he been apprised of that consequence—a decision that would certainly have been "rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). Because the state court failed to apply either prong of *Hill*, this Court must assess Mr. Baxter's claim *de novo*. Applying the proper standard under *Hill*, Mr. Baxter received ineffective assistance of counsel and is entitled to habeas relief.

II. This Court should remand for an evidentiary hearing on Mr. Baxter's suppression-motion claim. The state court concluded counsel lacked a "good faith basis" to file a suppression motion because the interrogation transcript on its face "clearly showed [Mr. Baxter] was not impaired." Doc.9-5 at 27. This was both "an unreasonable determination of the facts" and an "unreasonable application" of *Strickland v.*

Washington, 466 U.S. 668 (1984). 28 U.S.C. § 2254(d). Far from "clearly" showing a lack of impairment, the transcript contained substantial evidence Mr. Baxter was heavily medicated and disoriented when interrogated. And given the numerous indications of impairment, any "reasonably competent attorney" would have "explored the possibility" Mr. Baxter was unable to knowingly and intelligently waive his *Miranda* rights and "considered moving the court" to suppress the statement on that ground. *Newland v. Hall*, 527 F.3d 1162, 1187, 1191 (11th Cir. 2008). Counsel's failure to take even these basic steps was constitutionally deficient, and the state court's decision to the contrary was an unreasonable application of *Strickland*.

Because the state court's ruling is not entitled to AEDPA deference, a federal court must decide Mr. Baxter's claim *de novo*. As Mr. Baxter was never afforded the opportunity to develop the factual basis for this claim, despite numerous requests to do so, this Court should remand for an evidentiary hearing at which the district court can consider the interrogation video as well as other evidence demonstrating that a suppression motion had a reasonable probability of being granted.

III. Finally, Mr. Baxter is entitled to resentencing because his mandatory life-without-parole (LWOP) sentence constitutes cruel and unusual punishment. The Supreme Court has clearly established that persons like Mr. Baxter, who did not kill, intend death, or act with reckless disregard for human life, are "categorically less deserving of the most serious forms of punishment." *Graham v. Florida*, 560 U.S. 48, 69 (2010). Indeed, the Court has held categorically that persons in Mr. Baxter's circumstance cannot constitutionally be sentenced to death given their diminished culpability. *Enmund v. Florida*, 458 U.S. 782, 798 (1982). The Court has also held that LWOP is among "the most serious forms of punishment" and "share[s] some characteristics with death sentences…shared by no other sentences." *Graham*, 560 U.S. at 69.

It follows that LWOP is likewise unconstitutionally excessive for those who, like Mr. Baxter, are "categorically less deserving of the most serious forms of punishment." *Id.* At the very least, a sentencing scheme that mandates LWOP without allowing any individualized assessment of the person's actual conduct or culpability "poses too great a risk of disproportionate punishment" for the subset of felony-murder defendants who are categorically less deserving of the severest punishments. *Miller*

v. Alabama, 567 U.S. 460, 479 (2012). Accordingly, the Eighth Amendment "forbids" the mandatory LWOP sentence imposed here. *Id.*

Even if Mr. Baxter's mandatory LWOP sentence were not categorically unconstitutional, it is unconstitutional as applied to him. LWOP—the harshest term of imprisonment and second-most severe penalty after execution—is wildly out of proportion to Mr. Baxter's minimal conduct and attenuated culpability for the accidental deaths. Examination of other jurisdictions' felony-murder laws, as well as the other offenses for which Florida mandates LWOP, confirms that LWOP is a grossly disproportionate punishment in Mr. Baxter's case. Mr. Baxter could not have received LWOP in the vast majority of jurisdictions in this country, and Florida itself has deemed persons with the same or even worse conduct and culpability worthy of a discretionary, individualized sentence rather than automatic LWOP.

Because the state court applied a rule contrary to governing Supreme Court precedent, its denial of Mr. Baxter's Eighth Amendment claim is not entitled to AEDPA deference, and this Court must review it *de novo*. But even if AEDPA deference applied, Mr. Baxter's is one of the rare cases that would meet it.

ARGUMENT

I. Trial Counsel Provided Ineffective Plea Advice by Failing To Advise Mr. Baxter that Pleading Guilty to Burglary Would Concede the Only Contestable Elements of Felony Murder.

A. The state court applied a rule contrary to governing Supreme Court law.

In *Hill v. Lockhart*, 474 U.S. 52 (1985), the Supreme Court held that the two-part test established in *Strickland v. Washington*, 466 U.S. 668 (1984), applies to challenges to the voluntariness of guilty pleas based on faulty plea advice. Thus, under *Hill*, the petitioner must show (1) that counsel's plea advice "fell below an objective standard of reasonableness," 474 U.S. at 57 (quoting *Strickland*, 466 U.S. at 687-88), and (2) "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial," *id.* at 59. To find a "reasonable probability" of prejudice, the Court must conclude "that a decision to reject the plea" and go to trial "would have been rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010); *see also Lee v. United States*, 582 U.S. 357, 370-71 (2017).

The state court did not apply the *Hill* test to Mr. Baxter's claim. Instead, it denied Mr. Baxter's claim on the ground that pleading served a "purpose" at trial of establishing that he "accepted responsibility" for

the burglaries while "separat[ing] himself from" Oakley's "decisions and actions." Doc.9-5 at 15.[6] The *Hill* standard, however, does not ask whether a plea might have served some strategic "purpose." The only questions are whether counsel's plea advice was objectively reasonable and whether there is a reasonable probability the petitioner would not have pled had he been properly advised.

Indeed, pleading nearly always serves a "purpose"—most pleas (although not Mr. Baxter's) result in the government dropping charges and recommending sentencing credit for acceptance of responsibility, allowing the petitioner to avoid a "significantly longer prison sentence." *Lee*, 582 U.S. at 362 (cleaned up); *see Padilla*, 559 U.S. at 373 (noting that

[6] In conducting the § 2254(d) analysis, this Court reviews "the last state-court adjudication on the merits." *Sears v. Warden GDCP*, 73 F.4th 1269, 1280 (11th Cir. 2023). For Mr. Baxter's two ineffective-assistance claims, that is the state appellate court's summary affirmance of the denial of Mr. Baxter's Rule 3.850 motion. Doc.9-6 at 196. Because that decision was "not...accompanied with...reasons," this Court must "look through" it to the "last related state-court decision that does provide a relevant rationale" and "presume" that the summary affirmance adopted the same reasoning. *Wilson v. Sellers*, 584 U.S. 122, 125 (2018). Here, that is the state trial court's denial of the Rule 3.850 motion. Doc.9-6 at 141. Because the state court denied that motion "[f]or the reasons articulated in the State's response," *id.*, this Court treats the State's response as the reasoning of the state court. *See Finch v. Sec'y, Dep't of Corr.*, 643 F. App'x 848, 850 n.2 (11th Cir. 2016).

collaterally attacking a plea may eliminate the "benefit of the bargain" and "result in a *less favorable* outcome for the defendant"). While such benefit may factor into the analysis of whether foregoing a plea would have been "rational under the circumstances," *id.* at 372, whether the plea serves a "purpose" is not itself an element of the *Hill* standard, much less the sole or dispositive inquiry. *See, e.g.*, *Lee*, 582 U.S. at 371 (finding reasonable probability petitioner would have rejected plea and gone to trial, notwithstanding that doing so risked a much longer sentence and that "[n]ot everyone in Lee's position would" do so).

Put simply, the question under *Hill* is not, as the state court asked, whether pleading guilty to, and thus conceding his participation in, the burglaries was a reasonable trial strategy; the question is whether Mr. Baxter would have still pursued that strategy *as a matter of fact* had he been properly advised. Because the state court applied a different rule than *Hill* requires, its decision was "contrary to clearly established federal law" under § 2254(d)(1). *Calhoun v. Warden, Baldwin State Prison*, 92 F.4th 1338, 1349 (11th Cir. 2024). Accordingly, "instead of

applying AEDPA deference to" the state court's ruling, this Court must decide Mr. Baxter's plea-advice claim *de novo*.[7] *Id.* at 1347.

B. Trial counsel rendered constitutionally ineffective plea advice.

Mr. Baxter attested under penalty of perjury in his state post-conviction petition that his lawyer failed to explain that pleading guilty to burglary would concede elements of felony murder, leaving "just one element for the state to prove"—the victims' deaths, which were undisputed and uncontestable. Doc.9-2 at 10-11; *see id.* at 40. Mr. Baxter also attested that, had trial counsel "properly advised" him of these "adverse consequences," he would not have pled but "would have proceeded to trial on all counts." *Id.* at 13, 20, 40. These uncontested attestations—neither of which the state court discredited—established ineffective assistance of counsel under *Hill*.

First, there can be little question that it was objectively unreasonable for Mr. Baxter's counsel not to advise him that pleading to the underlying burglaries would concede elements of felony murder.

[7] Even if the Court were not to review this claim *de novo*, Mr. Baxter would be entitled to habeas relief because the state court's ruling constituted an unreasonable application of *Hill* under 28 U.S.C. § 2254(d)(1). *See* Part I.B.

"The failure of an attorney to inform his client of the relevant law" before taking a plea "clearly satisfies the first prong of the *Strickland* analysis as such an omission cannot be said to fall within the wide range of professionally competent assistance demanded by the Sixth Amendment." *Finch v. Vaughn*, 67 F.3d 909, 916 (11th Cir. 1995) (cleaned up). Here, the "relevant law" included not just the elements of burglary but the elements of felony murder. Mr. Baxter needed to know that, to convict him of felony murder, the State was required to prove his participation in the burglaries beyond a reasonable doubt and that, by pleading to burglary, he was relieving the State of its burden on those essential elements—the only ones he could viably contest.

Indeed, it is beyond dispute that a plea is not knowing and voluntary unless made with "an awareness of its true consequences." *Betencourt v. Willis*, 814 F.2d 1546, 1548 (11th Cir. 1987); *see Boykin v. Alabama*, 395 U.S. 238, 244 (1969) (voluntariness requires the accused have "a full understanding of what the plea connotes and of its consequence"). The Supreme Court has recognized that even arguably "collateral consequences" like deportation can fall within counsel's constitutional obligation to provide effective plea advice when those

consequences are "intimately related to the criminal process." *Padilla*, 559 U.S. at 365. Here, there was nothing "collateral" about the consequence at issue—burglary and felony murder are inextricably intertwined criminal charges, and pleading guilty to burglary had a direct impact on the elements of felony murder and consequently the defenses available at trial. Counsel's failure to explain to Mr. Baxter this critical consequence before he pled fell below an objective standard of reasonableness and thus was constitutionally deficient.

Second, there is a reasonable probability that, had counsel properly advised Mr. Baxter, he would not have pled to the burglary counts but would have insisted on making the State prove them at trial. *See Hill*, 474 U.S. at 59. Indeed, Mr. Baxter attested under penalty of perjury he would have done so. Doc.9-2 at 13, 20, 40. And doing so would have been "rational under the circumstances." *Padilla*, 559 U.S. at 372. Mr. Baxter received no benefit from pleading—he entered open pleas, without an agreement. In fact, the State urged the court to give Mr. Baxter a *higher* sentence for the burglaries than it ultimately imposed. Doc.10-2 at 871-72 (urging 10-20 years); *see Esslinger v. Davis*, 44 F.3d 1515, 1530 (11th Cir. 1995) (*Hill* prejudice established where plea resulted in petitioner

receiving the same sentence, and thus he had "nothing to gain" by pleading and "nothing to lose by going to trial").

By contrast, pleading guilty to burglary made the State's job at Mr. Baxter's felony-murder trial considerably easier, as it eliminated the State's burden on two of the three elements of felony murder. The judge himself acknowledged this consequence on the morning of trial, noting there was "a good possibility" the jury would find Mr. Baxter guilty of felony murder because he had "already admitted that [he] committed" the underlying burglaries. Doc.10-2 at 8. Given this, it would certainly have been rational for Mr. Baxter to have chosen to hold the State to its burden on all counts rather than conceding away every essential element.

That is so even if Mr. Baxter's guilty pleas allowed defense counsel to argue at trial that he had "accepted responsibility" for the burglaries. Doc.9-5 at 15 (State arguing that pleas served a strategic "purpose"). Mr. Baxter's pleas effectively dictated his trial strategy: having conceded his participation in the burglaries, he had no defense available except to argue that Oakley's flight was an "independent act"—banking on the court granting an "independent act" instruction, and the jury finding it persuasive. *See supra* n.3. While counsel might have believed that the

best defense, it was not the only one possible: Mr. Baxter could have challenged his participation in a joint venture to commit burglary *at all*.

It would not have been irrational for Mr. Baxter to elect that route—particularly given that the acceptance-of-responsibility defense counsel *did* pursue resulted in conviction in less than an hour. Doc.10-2 at 842-44; Doc.10-2 at 8 (trial judge predicting Mr. Baxter's concession to the underlying burglaries created a "good possibility" of conviction); *see Lee*, 582 U.S. at 368, 371 (recognizing that, where the consequences of conviction are extreme, it is not irrational to take one's chances at trial although others similarly situated might choose a different course). Mr. Baxter was entitled to be advised of the consequences his pleas would have for the felony-murder charges before choosing his strategy, and counsel's failure to do so induced him to concede elements he would not have otherwise. *Cf. McCoy v. Louisiana*, 584 U.S. 414, 417-18 (2018) ("[I]t is the defendant's prerogative, not counsel's, to decide on the objective of his defense: to admit guilt…or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.").

Because Mr. Baxter has established both deficient performance and prejudice under *Hill*, he is entitled to relief on his plea-advice claim.

Here, Mr. Baxter's criminal proceedings did not end with his burglary pleas but continued to a trial at which burglary was the linchpin of the felony-murder counts. Because his pleas infected the entire course of the criminal proceeding—eliminating any leverage he might have had for a favorable plea offer on the homicide charges, and effectively dictating his trial strategy—the proper remedy is to allow Mr. Baxter a new trial on all counts without any concession on the burglaries. That is the position he would have been in had he been properly advised. Put differently, counsel's faulty advice denied Mr. Baxter "the entire judicial proceeding to which he had a right"—a felony-murder trial at which he had not conceded his participation in the underlying felonies. *Lee*, 582 U.S. at 364 (cleaned up); *see id.* at 364-65 (faulty pleas based on failure to apprise the defendant "of the consequences of pleading guilty" do not require assessing whether the defendant "would have been better off going to trial"). Nothing more is required for reversal under *Hill*.

Alternatively, if this Court is "reluctant to conduct *de novo* review in the first instance" based on Mr. Baxter's uncontested attestations, it should remand for the district court to hold an evidentiary hearing. *Daniel*, 822 F.3d at 1280 (cleaned up). Mr. Baxter "requested, but was

never granted, an evidentiary hearing" in both state and federal court. *Id.* Thus, he has "never been afforded an opportunity to develop" the factual bases for his claim, nor "has the State had an opportunity to challenge them in an adversarial hearing." *Id.* (cleaned up). Because Mr. Baxter has "alleged sufficient facts that, if true, would entitle him to habeas corpus relief" under *Hill*, he is "entitled to an evidentiary hearing." *Id.*

II. Trial Counsel Provided Ineffective Assistance by Failing To Seek Suppression of Mr. Baxter's Police Statement.

A. The state court's decision was based on an unreasonable determination of the facts and constituted an unreasonable application of *Strickland*.

Mr. Baxter's interrogation transcript was rife with indication he was heavily medicated and thus unable to knowingly and intelligently waive his *Miranda* rights. *See Moran v. Burbine*, 475 U.S. 412, 421 (1986) (valid *Miranda* waiver requires "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it"); *Miller v. Dugger*, 838 F.2d 1530, 1537-38 (11th Cir. 1988) (state bears burden of showing *Miranda* waiver was valid). Indeed, Mr. Baxter informed the detectives on no fewer than seven occasions that his

impairment was affecting his ability to process information, and the detectives themselves questioned three times whether he was lucid.

At the start of the interrogation, a detective acknowledged Mr. Baxter had come from the hospital, and the video showed him still wearing his hospital gown. Doc.10-2 at 608, 686. After asking, "Are you awake?," a detective observed Mr. Baxter was "talking real low," prompting Mr. Baxter to inform them he was on "a lot of medication," including Percocet and several others. *Id.* at 616, 620. This caused the detective to question whether Mr. Baxter was "coherent" and understood the questions and his *Miranda* rights. *Id.* Later, Mr. Baxter reiterated that he was "taking seven different pills." *Id.* at 641. After exhibiting confusion, Mr. Baxter again pleaded, "I'm just saying it's the pills messing with my head still." *Id.* at 657. This prompted the detective again to question whether Mr. Baxter was impaired, asking, "Sadik, are you fucked up right now?" *Id.* Mr. Baxter responded, "I honestly think I am. I'm feeling like I'm straight, but I'm [unintelligible]." *Id.*

Mr. Baxter again started to plead his confusion but was cut off by the detective. *Id.* at 658. He later reminded the detectives he was "still on the medication." *Id.* at 673. When asked again at the end of the

interrogation whether he understood everything, Mr. Baxter responded that "a lot was confusing." *Id.* at 681. The detective asked what, and Mr. Baxter responded, "Just everything." *Id.* When pressed, Mr. Baxter ultimately stated that he understood the questions. *Id.*

Mr. Baxter argued in his state post-conviction motion that, given this extensive evidence of impairment, trial counsel's failure "to review" the circumstances of his confession and "make an attempt to prevent its admission" fell "below an objective standard of reasonableness" under *Strickland*. Doc.9-2 at 34-35. He also argued that, had counsel done so, there was a reasonable probability the statement would have been suppressed, rendering the State "unable to prove" a common design with Oakley. *Id.* at 35. As with his other claims, Mr. Baxter requested an evidentiary hearing to develop the factual basis for this claim. *Id.* at 36.

The state court denied this claim without a hearing, concluding that counsel "would not have [had] a good faith basis" to seek suppression of the statement because the transcript "clearly showed [Mr. Baxter] was not impaired at the time he spoke with the detectives." Doc.9-5 at 27. That decision was both "based on an unreasonable determination of the facts," 28 U.S.C. § 2254(d)(2), and "involved an unreasonable application

of" *Strickland*, *id.* § 2254(d)(1). Each ground is independently sufficient to warrant *de novo* review under AEDPA.

First, the state court's factual finding that the interrogation transcript "clearly showed [Mr. Baxter] was not impaired," Doc.9-5 at 27, was not just wrong, it was patently unreasonable. As detailed above, there were numerous indications Mr. Baxter was impaired due to heavy medication: He had just come from the hospital. He stated repeatedly he was on multiple medications and was confused and disoriented as a result. And the detectives themselves questioned whether Mr. Baxter was "coherent" and "fucked up." Doc.10-2 at 620, 657. These multiple instances, on the face of the statement, "provided substantial grounds to question" whether Mr. Baxter was impaired and thus unable to knowingly and intelligently waive his rights. *Sears*, 73 F.4th at 1289 (quoting *Brumfield v. Cain*, 576 U.S. 305, 319 (2015)). To say it was "clear[]" from the cold transcript alone that Mr. Baxter "was not impaired," Doc.9-5 at 27—notwithstanding all the indications to the contrary—was plainly an "unreasonable determination of the facts in light of the evidence presented," 28 U.S.C. § 2254(d)(2). For that reason alone, *de novo* review is required. *See Sears*, 73 F.4th at 1295.

Alternatively, the state court's decision constituted an "unreasonable application of" *Strickland*. 28 U.S.C. § 2254(d)(1). *Strickland*'s performance prong asks whether counsel's performance "fell below an objective standard of reasonableness." 466 U.S. at 688. Here, there were numerous indicia on the statement's face that Mr. Baxter's medication-induced impairment rendered him unable to validly waive his *Miranda* rights. Any "reasonably competent attorney" faced with such a statement would, at a minimum, "explore[] the possibility" that Mr. Baxter's medical intoxication rendered his *Miranda* waiver invalid and "consider[] moving the court" to suppress the statement on that ground. *Newland v. Hall*, 527 F.3d 1162, 1187, 1191 (11th Cir. 2008); *see Smith v. Dugger*, 911 F.2d 494, 496, 498 (11th Cir. 1990) (where confession bears indications it was taken under questionable circumstances, an attorney's failure to "investigate the circumstances of" the confession and "file some motion to limit" its admission constitutes ineffective assistance).[8]

[8] Florida's courts, like this Court, have recognized that failing to seek suppression of a confession obtained while the defendant was intoxicated can constitute ineffective assistance. *See, e.g.*, *Slade v. State*, 129 So. 3d 461, 463-464 (Fla. Dist. Ct. App. 2014); *Harrison v. State*, 562

All the more so where, as here, the statement was the State's principal evidence against Mr. Baxter and, before he pled, the "only piece of evidence" of a common design with Oakley. *Arvelo v. Sec'y, Florida Dep't of Corr.*, 788 F.3d 1345, 1349 (11th Cir. 2015) (failure to move to suppress statement taken while suspect was intoxicated and which constituted the State's sole evidence of intent would, "if true," constitute ineffective assistance). No prudent trial strategy could have been served by not making even a minimal effort to investigate and attempt to exclude the most harmful piece of evidence and the sole evidence establishing a common design to commit burglary. As the Supreme Court has said, a confession is "like no other evidence" and is "probably the most probative and damaging evidence that can be admitted against" a person. *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (cleaned up).

The state court's decision was, in essence, that a reasonably competent attorney could (1) decide from a cold transcript of Mr. Baxter's confession alone that he was "clearly…not impaired" and thus that there was no "good faith basis" to attempt to exclude it, Doc.9-5 at 27; and thus

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So. 2d 827, 827-28 (Fla. Dist. Ct. App. 1990); *Reddish v. State*, 167 So. 2d 858, 862-63 (Fla. 1964).

(2) not make even a minimal effort to explore the confession's circumstances—such as what medications Mr. Baxter was on and what their effect on his cognition would have been—much less mount an argument that his heavily medicated condition rendered his *Miranda* waiver invalid. Because *Strickland* plainly demands more than that, *see Newland*, 527 F.3d at 1190; *Smith*, 911 F.2d at 498, the state court's decision constituted an unreasonable application of *Strickland*.

B. Remand is necessary to allow Mr. Baxter to develop the factual basis for his claim at an evidentiary hearing.

Because the state court's decision was both "based on an unreasonable determination of the facts" and constituted an "unreasonable application" of *Strickland*, 28 U.S.C. § 2254(d), it is not entitled to AEDPA deference; rather, a federal court must decide Mr. Baxter's claim *de novo*. *See Calhoun*, 92 F.4th at 1349. In doing so, the federal court is not limited to the factual record before the state court. *Arvelo*, 788 F.3d at 1349. Indeed, requiring Mr. Baxter to "prove that he is entitled to relief solely on the basis of the state-court record" would impose "too great a burden" on him given that he "requested, but was denied, an evidentiary hearing in his state and federal habeas petitions." *Id.* at 1349 & n.4; *see Daniel*, 822 F.3d at 1280-81.

Here, remand is necessary to allow Mr. Baxter to develop the factual basis for his claim at an evidentiary hearing. The existing record includes only a cold transcript of Mr. Baxter's interrogation statement. Absent is the actual videorecording of the interrogation, which not only shows Mr. Baxter's heavily sedated and confused demeanor but also elucidates the tone of the detectives' questioning—both critical circumstances going to the validity of his *Miranda* waiver that are impossible to glean from the transcript alone. At a minimum, the district court should open the record to consider the videorecording.

Additionally, Mr. Baxter should be permitted to introduce other evidence that could have supported a suppression motion, had counsel investigated it, such as hospital records demonstrating the medications he received; expert testimony explaining how those medications would have affected his comprehension; and testimony from hospital personnel who warned detectives that Mr. Baxter was "not in a stable mental condition to answer questions." Doc.23 at 32 (allegations under penalty of perjury in habeas petition). The court should also hear from both Mr. Baxter and trial counsel to understand what conversations, if any, they

had concerning a suppression motion and why counsel did not take even the most basic steps to investigate and attempt to exclude his statement.

III. Mr. Baxter's Mandatory Life-Without-Parole Sentence Constitutes Cruel and Unusual Punishment.

A. The state court applied a rule contrary to governing Supreme Court law.

The state court denied Mr. Baxter's Eighth Amendment claim on the ground that "the Legislature makes the law."[9] Doc.10-2 at 864. Although the court recognized "the draconian nature of the penalty" and observed that "all agree" Mr. Baxter's "involvement" was not "significant," it did not determine whether mandatory life without parole (LWOP) is unconstitutionally excessive. *Id.* at 863-64. Instead, it concluded it was prohibited from holding Mr. Baxter's sentence unconstitutional because "the Legislature makes the law," and Florida's law, "good, bad or indifferent," mandated LWOP. *Id.*

That decision was contrary to clearly established Supreme Court law. The Court has repeatedly held criminal sentences to violate the Eighth Amendment, notwithstanding that a legislature had permitted—

[9] The last state-court decision to provide a relevant rationale for federal-review purposes is the trial court's ruling on Mr. Baxter's Eighth Amendment challenge at sentencing. Doc.10-2 at 863-64; *see supra* n.6.

or even mandated—the sentence. *See, e.g.*, *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Kennedy v. Louisiana*, 554 U.S. 407 (2008); *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Solem v. Helm*, 463 U.S. 277 (1983); *Enmund v. Florida*, 458 U.S. 782 (1982); *Coker v. Georgia*, 433 U.S. 584 (1977); *Weems v. United States*, 217 U.S. 349 (1910).

If the state court's rule were correct, the Court could not have found an Eighth Amendment violation in any of those cases, as in every instance a legislature had enacted the law at issue. Indeed, the state court's rule amounted to a decision that sentencing schemes are inherently constitutional so long as "enacted by the Legislature," Doc.10-2 at 864, a rule in direct conflict with the Supreme Court's admonition that "no penalty is *per se* constitutional," *Solem*, 463 U.S. at 290.

Because the state court "applied a rule that contradicts the governing law set forth by Supreme Court case law," its decision was contrary to clearly established Supreme Court law under § 2254(d)(1). *Arvelo*, 788 F.3d at 1348. Accordingly, this Court's review is "unencumbered by the deference AEDPA normally requires." *Panetti v. Quarterman*, 551 U.S. 930, 948 (2007). Instead, this Court must decide

Mr. Baxter's Eighth Amendment claim *de novo*. *Calhoun*, 92 F.4th at 1346-49. But even were this Court to examine the issue through the lens of AEDPA's standard, this is one of the rare cases that would meet it.

B. Sentencing a young man to mandatory LWOP for an accidental death he did not cause, intend, or act with reckless disregard to bring about constitutes cruel and unusual punishment.

The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. Amend. VIII. The concept of proportionality—the precept that punishment "should be graduated and proportioned" to both "the offender and the offense," *Miller*, 567 U.S. at 469 (cleaned up)—is "central" to that provision, *Graham*, 560 U.S. at 59. Indeed, "[p]rotection against disproportionate punishment" is the Eighth Amendment's "central substantive guarantee." *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016).

The Supreme Court has recognized two methodologies for determining whether a sentence violates the Eighth Amendment. First, the Court has recognized "categorical bans on sentencing practices" based on "mismatches between the culpability of a class of offenders and the severity of a penalty." *Miller*, 567 U.S. at 470; *see Graham*, 560 U.S. at 60-61 (listing cases). Alternatively, in the as-applied approach, the Court

"considers all of the circumstances of the case" to determine whether the particular person's sentence is "unconstitutionally excessive" relative to his conduct and culpability. *Graham*, 560 U.S. at 59; *see, e.g.*, *Solem*, 463 U.S. at 295-303 (holding LWOP unconstitutional-as-applied to a habitual offender convicted only of minor nonviolent felonies).

Under either approach, the ultimate question is the same: whether the sentence imposed is so disproportionate to the person's conduct and culpability as to constitute cruel and unusual punishment. And under either approach, the answer to that question here is a resounding yes.

1. Mandatory LWOP is cruel and unusual for the subset of felony-murder defendants with categorically diminished culpability.

Examination of the Supreme Court's categorical-approach jurisprudence leads to the inexorable conclusion that a sentencing scheme mandating LWOP for felony murder is categorically cruel and unusual for the subset of defendants in which Mr. Baxter falls.

i. Persons who do not kill, intend to kill, or act with reckless disregard for human life are categorically less deserving of the most serious forms of punishment.

The Supreme Court has recognized 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" than are defendants who intentionally or recklessly take life. *Graham*, 560 U.S. at 69. In *Enmund*—the principal case on which *Graham* relied for that proposition—the Court held that the Eighth Amendment categorically prohibits imposing the death penalty on someone convicted of felony murder "who neither took life, attempted to take life, nor intended to take life." 458 U.S. at 787.

Enmund involved an armed robbery that turned fatal; the petitioner was waiting in a getaway car and helped the robbers flee. *Id.* at 784. Although there was no evidence Enmund intended or anticipated lethal force would be used, he was convicted of felony murder and—along with the triggerman—sentenced to death. *Id.* at 785, 788.

The Supreme Court held it was "impermissible under the Eighth Amendment" to give Enmund the identically severe sentence as the "robbers who killed" when "his culpability [was] plainly different." *Id.* at 798. Although Enmund was convicted of felony murder, the Court explained, the question was "not the disproportionality of death as a penalty for murder" in the abstract, but "the validity of capital punishment for Enmund's own conduct"—the focus "must be on *his*

culpability, not on that of those who…shot the victims." *Id.*; *see id.* at 801 ("Enmund's criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt.").

Five years later, the Court clarified that *Enmund*'s categorical prohibition on the death penalty does not extend to cases in which the defendant, although not causing or intending death, acted with "reckless disregard to human life." *Tison v. Arizona*, 481 U.S. 137, 157 (1987). *Tison* was premised on a recognition that lack of intent alone can be a poor proxy for "definitively distinguishing the most culpable and dangerous of murderers," as "some nonintentional murderers may be among the most dangerous and inhumane of all"—for example, "the person who tortures another not caring whether the victim lives or dies." *Id.* Thus, while *Tison* limited the scope of *Enmund*'s categorical ban, it reinforced its key rationale: that only those felony-murder defendants with "a highly culpable mental state"—the "most dangerous and inhumane" actors—should be treated comparably to premeditated murderers in imposing extreme sentences. *Id.*

ii. LWOP shares critical characteristics with the death penalty and thus merits similar treatment in Eighth Amendment analysis.

Enmund and *Tison* concerned the death penalty, but the Court has since recognized the close parallels between capital punishment and LWOP and held that, in circumstances of diminished culpability, the two should be treated similarly for Eighth Amendment purposes. In *Graham* and *Miller*, the Court broke down the wall that had separated capital sentencing and made clear that the central rationale undergirding the many constitutional bars on the execution of certain classes of offenders—that persons with diminished culpability are "categorically less deserving of the most serious forms of punishment," *Graham*, 560 U.S. at 69—applies with equal force to LWOP. *See id.* at 103 (Thomas, J., dissenting) (observing that *Graham* "eviscerates" the distinction between death and LWOP and that "'[d]eath is different' no longer").

Specifically, *Graham* and *Miller* recognized that, while "a death sentence is unique in its severity and irrevocability," life-without-parole sentences "share some characteristics with death sentences that are shared by no other sentences." *Id.* at 69 (cleaned up). LWOP is "the second most severe penalty permitted by law," *id.*—the "harshest term of

imprisonment," *Miller*, 567 U.S. at 474, and the "lengthiest possible incarceration" *id.* at 475. Beyond its sheer duration, LWOP "alters the offender's life by a forfeiture that is irrevocable." *Graham*, 560 U.S. at 69. It deprives the person "of the most basic liberties without giving hope of restoration"—"good behavior and character development are immaterial" for someone relegated to "remain in prison for the rest of his days." *Id.* at 70 (cleaned up). Indeed, it is this "denial of hope" that renders LWOP "far more severe"—and qualitatively different—than even a life sentence, which at least gives the possibility of release before death. *Id.* (quoting *Solem*, 463 U.S. at 297).

Given these parallels, the Court made clear in *Graham* and *Miller* that LWOP—like the death penalty—may, in some circumstances, be categorically disproportionate when imposed on people with diminished culpability. Thus, in *Graham*, the Court held that the Eighth Amendment prohibits LWOP for juveniles convicted of non-homicide crimes. *Id.* at 75. And in *Miller*, the Court struck down sentencing schemes mandating LWOP for juvenile homicide crimes without an individualized assessment of either the circumstances of the offense or the person's culpability. 567 U.S. at 477, 479.

Graham and *Miller* both concerned juveniles, but their observations about the unique severity of LWOP were not limited to that context, nor was the petitioners' youth the sole basis for classifying them as less culpable.[10] Indeed, in *Graham*, the Court started from the core principle 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* than are murderers"—citing *Enmund* and *Tison*, both felony-murder cases involving adults, as exemplars. *Graham*, 560 U.S. at 69 (emphasis added). A juvenile in that circumstance, *Graham* observed, simply has "twice diminished moral culpability"—both his immaturity *and* the nature of the offense make him "less deserving of the most severe punishments." *Id.* at 68-69; *see also Miller*, 567 U.S. at 477-78 (observing that "the circumstances of the homicide offense…go to [the defendant's] culpability" as much as do personal characteristics).

[10] *Graham* did observe that LWOP is "especially harsh" for a juvenile because he will "on average serve more years and a greater percentage of his life in prison than an adult offender"—but only after examining at length the aspects of LWOP that make it uniquely severe for all persons. 560 U.S. at 70. At any rate, Mr. Baxter was only 25 when the events here occurred, making *Graham*'s practical observations just as applicable. For him, as for an 18-year-old, LWOP is "akin to the death penalty." *Miller*, 567 U.S. at 475.

Indeed, in some cases—like this one—the circumstances of the offense are far more indicative of a diminished "moral culpability" than age and can render an adult defendant's "moral culpability" less than a juvenile's convicted of the same or even a lesser offense. *Graham*, 560 U.S. at 69. For example, although the *Graham* petitioner's conduct did not result in death, and thus was not charged as homicide, it was much more "dangerous and inhumane," *Tison*, 481 U.S. at 157, than Mr. Baxter's theft from a few unlocked, unoccupied parked cars. Graham, with two accomplices, committed an armed home-invasion robbery in which he "forcibly entered the home and held a pistol to [someone's] chest," then attempted a second armed robbery, all while on probation for an earlier violent armed burglary of a restaurant. 560 U.S. at 53-54.

Likewise, the circumstances of the homicides in *Miller* were far more violent and dangerous—and the petitioners' roles in them much more pivotal—than the accidental vehicular deaths that occurred miles away from where Mr. Baxter sat detained. One of the *Miller* petitioners participated in a fatal armed robbery of a video store with a sawed-off shotgun; the other bludgeoned a neighbor with a baseball bat, then lit his

trailer on fire, leaving him to die from his injuries and smoke inhalation. 567 U.S. at 465-66, 468.

While the Court recognized that the petitioners' juvenile status could render them less deserving of LWOP, nothing in *Miller* suggested that youth was the sole characteristic that might diminish the "culpability of a class of offenders." *Id.* at 470. To the contrary, *Miller* reinforced *Graham*'s recognition that the circumstances of an offense, like one's personal characteristics, can render someone "categorically less deserving of the most serious forms of punishment." *Graham*, 560 U.S. at 69; *see Miller*, 567 U.S. at 473, 477-78.

iii. Florida's scheme mandating LWOP for first-degree felony murder poses too great a risk of disproportionate punishment for persons who did not kill, intend to kill, or act with reckless disregard for human life.

The above Supreme Court precedent makes clear that Florida's law mandating LWOP for all persons convicted of first-degree felony murder—regardless of their conduct or culpability—is unconstitutional, and sentencing judges must be given discretion to fashion an individualized sentence commensurate with culpability. The Supreme Court has stated unequivocally that persons in Mr. Baxter's

circumstance are "categorically less deserving of the most serious forms of punishment" than those who intentionally or recklessly caused a death. *Graham*, 560 U.S. at 69. And the Court has made clear that LWOP—the law's "harshest term of imprisonment," *Miller*, 567 U.S. at 474, that "guarantees" the person "will die in prison without any meaningful opportunity to obtain release," *Graham*, 560 U.S. at 79—is, like death, among "the most serious forms of punishment," *id.* at 69.

It follows that, at least in some circumstances, LWOP is unconstitutionally excessive for the subset of persons for whom the death penalty is unconstitutional under *Enmund* and *Tison*. Yet, Florida's law mandates that extreme sentence for all persons convicted of first-degree felony murder, regardless of how trivial their actual conduct was or whether they bear any "personal responsibility," *Enmund*, 458 U.S. at 801, or "moral culpability," *Graham*, 560 U.S. at 69, for the death.

In *Miller*, the Supreme Court made clear that sentencing schemes that mandate LWOP without allowing the sentencer discretion to consider factors making a person "categorically less deserving of the most serious forms of punishment," *Graham*, 560 U.S. at 69, pose "too great a risk of disproportionate punishment" to pass constitutional muster,

Miller, 567 U.S. at 479. *Miller* did not categorically bar LWOP for juvenile homicide offenders, nor did it conclude that LWOP was excessive as applied to the petitioners in that case. *See id.* at 479, 483. Instead, the Court concluded that it was the mandatory nature of the sentencing schemes that rendered them constitutionally suspect, as they required imposition of "the law's harshest term of imprisonment" without any consideration of whether either the petitioners' personal characteristics like youth, or the "circumstances of the homicide offense" like their minimal role or mental state, rendered them less deserving of a sentence "akin to the death penalty." *Id.* at 474-75, 477-79.

So too here: even if it might be constitutionally permissible in some cases—though not here—to impose LWOP on someone who did not kill, intend death, or act with reckless disregard for human life, Florida's scheme mandating that extreme penalty in all first-degree felony-murder cases, regardless of the person's role, conduct, or culpability, "poses too great a risk of disproportionate punishment" to satisfy Eighth Amendment standards. *Id.* at 479. For the subset of felony-murder defendants who cannot constitutionally be sentenced to death under *Enmund* and *Tison*—*i.e.*, those who are "categorically less deserving of

the most serious forms of punishment" because they did not kill, intend death, or act with reckless disregard for human life, *Graham*, 560 U.S. at 69—the Eighth Amendment requires an individualized determination of culpability "before concluding that life without any possibility of parole [is] the appropriate penalty," *Miller*, 567 U.S. at 479.

2. LWOP is unconstitutional as applied to Mr. Baxter.

Even if mandatory LWOP were not categorically prohibited for the subset of felony-murder defendants who do not kill, intend death, or act with reckless disregard for human life, sentencing Mr. Baxter to die in prison without any possibility of parole is grossly disproportionate to his minor conduct and attenuated culpability. Accordingly, his life-without-parole sentence is unconstitutional as applied to him.

To determine whether a sentence is unconstitutional as applied, the Court first "compar[es] the gravity of the offense and the severity of the sentence." *Graham*, 560 U.S. at 60. If this analysis "leads to an inference of gross disproportionality," the Court examines (a) other offenses in the jurisdiction that receive the same sentence, and (b) the sentences imposed for the same offense in other jurisdictions. *Id.* (cleaned up). If these inquiries "validate" the Court's initial judgment, "the sentence is

cruel and unusual." *Id.* Here, all three inquiries demonstrate that LWOP here is unconstitutionally excessive.

i. LWOP is a grossly disproportionate punishment for Mr. Baxter's minor conduct and attenuated culpability.

First, comparing the gravity of Mr. Baxter's offense to the severity of his sentence leads to an inference of gross disproportionality. Mr. Baxter's sole conduct—the hook for his felony-murder prosecution—was opening unlocked, unoccupied, parked cars looking for valuables. Neither he nor Oakley, who remained in his vehicle, was armed. *See* Doc.10-2 at 374, 463. They acted early on a Sunday morning, when they were unlikely to encounter people. *Id.* at 342. And when Mr. Baxter did encounter someone—Bradley Kantor—he retreated in fear. *See id.* at 352-55 (Kantor testifying Baxter ran away and asked, "why are you following me?"); *id.* at 708 (Baxter testifying he retreated because he "didn't know who [Kantor] was" and was "scared for [his] life"); *id.* at 734 (Baxter stating he feared Kantor might shoot him or fight him).

In short, Mr. Baxter's conduct was "one of the most passive felonies a person could commit." *Solem*, 463 U.S. at 296. It involved "neither violence nor threat of violence to any person." *Id.* And it constituted the

least serious form of burglary in Florida—unarmed burglary of an unoccupied conveyance—a third-degree felony punishable by five years maximum.[11] *See* Fla. Stat. Ann. § 810.02(4)(b); *id.* § 775.082(3)(e). Simply put, the act of rifling through parked cars, while unlawful, is not one our society considers a grave offense—and certainly not one for which we sentence individuals to "die in prison." *Graham*, 560 U.S. at 79. It is not "a crime so grievous an affront to humanity that the only adequate response may be" permanent incarceration. *Enmund*, 458 U.S. at 797.

Although Florida's broad felony-murder doctrine permitted the State to prosecute Mr. Baxter for the accidental deaths resulting from the deputies' high-speed chase of Oakley, his own culpability for those deaths was extremely attenuated if not wholly non-existent. *See Solem*, 463 U.S. at 292 (the gravity of the offense includes "the culpability of the offender"); *Enmund*, 458 U.S. at 798 (relevant question is the felony-murder defendant's "own conduct" and "*his* culpability," not whether the

[11] In many states, Mr. Baxter's conduct would be deemed a misdemeanor. *See, e.g.*, Ind. Code Ann. § 35-43-4-2.7(d); Mass. Gen. Laws Ann. ch. 266, § 16A; Md. Code Ann., Crim. Law § 6-206; S.D. Codified Laws § 22-32-20.

penalty is disproportionate for murder in the abstract); *United States v. Darby*, 744 F.2d 1508, 1526 (11th Cir. 1984) (proportionality review focuses "not only on the offense as generally defined in the statute, but also on the offense as actually committed by appellant[]").

Mr. Baxter played no role in the high-speed chase that led to the cyclists' deaths; he was handcuffed in police custody when the pursuit began and remained incapacitated miles away, in the back of a police car, when the accident occurred over ten minutes later. Thus, not only did he not cause or intend the deaths, he was completely powerless to change the course of events that were unfolding. Yet, under Florida's sentencing scheme, he received the same mandatory LWOP sentence as the person directly responsible for the accidental deaths. His "culpability is plainly different from that of" Oakley, and yet Florida "treated them alike and attributed to" him Oakley's culpability. *Enmund*, 458 U.S. at 798. That is "impermissible under the Eighth Amendment." *Id.*

Even Oakley did not intend the cyclists' deaths; they were a tragic accident. At most, his flight from police evinced recklessness—but Mr. Baxter was not part of that chase and did not himself do anything that came close to reckless disregard for human life. Moreover, it was the

deputies' decision to engage Oakley in a high-speed chase, in violation of policy, that led to the deadly chase to begin with. And yet, it is Mr. Baxter who is relegated to "die in prison without any meaningful opportunity to obtain release." *Graham*, 560 U.S. at 69, 79. As one of the victim's children put it, "So many things could have been done differently…not just by" Baxter and Oakley "but by the Broward Sheriff's Office…and our dad would still be with us….No one player caused our father's death, but we especially fail to understand why Mr. Baxter should be held responsible." Amelkin Victim Impact Statement, *supra* p. 10.[12]

Indeed, the Florida legislature itself has recognized that some fatalities are so attenuated from the underlying felony that they do not warrant sentencing the participant as an intentional murderer—at least not automatically so. Under Florida law, if a death is caused by a non-participant in the underlying felony, such as the police or a bystander, the participants can be charged only with second-degree felony murder—

[12] A recent investigation found that over 3,300 people—hundreds of them bystanders—were killed by police pursuits over a six-year period; the majority of those deadly chases were initiated to pursue people suspected of low-level, non-violent crimes. Jennifer Gollan & Susie Neilson, *Fast and Fatal: Police chases are killing more and more Americans. With lax rules, it's no accident*, S.F. CHRONICLE (Feb. 27, 2024), https://www.sfchronicle.com/projects/2024/police-chases/.

a charge that gives the sentencing judge discretion to fashion a penalty commensurate with their conduct and culpability. *See* Fla. Stat. Ann. § 782.04(3); *id.* § 775.082(3)(b)(1).

Thus, had the cyclists been hit by the police or another motorist, Mr. Baxter would have received a discretionary sentence that could have been as low as time served and included the possibility of parole. It was only because of the random happenstance that it was Oakley who hit them, and not the police or another driver swerving to avoid the chase, that Mr. Baxter was eligible for a first-degree murder charge carrying mandatory LWOP. Such an arbitrary factor—a chance occurrence entirely outside Mr. Baxter's control—is irrelevant to his "moral culpability," *Graham*, 560 U.S. at 69, and yet it saddled him with "the law's harshest term of imprisonment," *Miller*, 567 U.S. at 474.

The state court recognized Mr. Baxter's attenuated connection to the deaths, remarking that "all agree[d]"—the defense, the State, and the court itself—that Mr. Baxter's "involvement" was not "significant." Doc.10-2 at 864. Indeed, the State itself understood that Mr. Baxter's role was not tantamount to murder—it was willing to drop his murder charges entirely in exchange for him testifying against Oakley. *See supra*

pp. 5-6, 12. Had the State believed he was truly responsible for murder, it would not likely have entertained the possibility of foregoing homicide charges altogether. The State's plea negotiations demonstrate not just that it believed Mr. Baxter less culpable than Oakley—they suggest the State did not believe him deserving of a murder charge *at all* and was just using it as leverage to extract his cooperation. In effect, then, Mr. Baxter received LWOP not because his conduct made him "the most culpable and dangerous of murderers," *Tison*, 481 U.S. at 157, but because he declined to assist the prosecution.

In short, for the act of burglarizing a few parked cars, Mr. Baxter received "the second most severe penalty permitted by law." *Graham*, 560 U.S. at 69. To give Mr. Baxter "the penultimate sentence," *Solem*, 463 U.S. at 303—solely because his accomplice in a nonviolent property crime led police on a fatal high-speed chase after he was arrested—raises a strong inference of gross disproportionality.

ii. Florida reserves LWOP for serious violent offenses and violent recidivists.

Examination of the other offenses for which Florida has mandated LWOP bolsters that inference, as Mr. Baxter's circumstances are an extreme outlier. Florida reserves LWOP for two classes of dangerous,

serious offenders: (1) persons convicted of capital felonies where the State has not sought the death penalty, which, other than felony murder, are uniformly violent or dangerous offenses, Fla. Stat. Ann. § 775.082(1)(a); and (2) "violent career criminals," "three-time violent felony offenders," and "prison releasee reoffenders" who have committed multiple violent felonies and whose most recent, committed within a short duration of the last, is life-eligible, *id.* §§ 775.084(1)(c)-(d), 4(c)-(d), 4(k); *id.* § 775.082(9).

Thus, for the act of committing an unarmed burglary of unoccupied vehicles with someone who subsequently caused a fatal car accident miles away, Mr. Baxter received the same "penultimate sentence," *Solem*, 463 U.S. at 303, as someone who commits premeditated murder, Fla. Stat. Ann. § 782.04; who engages in lethal terrorism with a weapon of mass destruction or destructive device, *id.* §§ 790.161, 790.166; who sexually batters a child under twelve, *id.* § 794.011; who kills or causes a foreseeable death through the importation of significant quantities of certain dangerous drugs, *id.* § 893.135; or who has shown "a repeated or an escalating pattern of criminal behavior, reflecting resistance to prison's prospectively deterrent effect" and thus warranting "enhanced

incapacitation," *State v. Cotton*, 769 So.2d 345, 356 (Fla. 2000) (describing purpose of recidivism provisions).

Perhaps most critically, Florida has determined that someone with Mr. Baxter's exact same conduct and culpability does *not* deserve LWOP if the fatal accident happens to be caused by a third party. As noted above, had the cyclists been hit by the police or another driver, Mr. Baxter could have been charged only with second-degree felony murder, which would have given the court discretion to sentence him to a term of years with the possibility of parole. *See* Fla. Stat. Ann. §§ 782.04(3), 775.082(3)(b)(1). That Florida has deemed someone with Mr. Baxter's same conduct and culpability worthy of a discretionary sentence in that situation is strong indication that punishing him with LWOP here—based solely on a random happenstance totally outside his control and wholly disconnected from his own culpability—is unconstitutionally excessive. *See Solem*, 463 U.S. at 291 (where "more serious crimes are subject to the same penalty, or to less serious penalties," that is "some indication that the punishment at issue may be excessive").

iii. Mr. Baxter would not have received LWOP in the vast majority of jurisdictions in this country.

Finally, examining other states' felony-murder schemes confirms that Mr. Baxter's mandatory life-without-parole sentence is unconstitutionally excessive. Only six other states—Arizona, Georgia, Mississippi, Nevada, South Carolina, and Wyoming—would even *permit* a life-without-parole sentence for someone in Mr. Baxter's position, assuming their prosecutors would exercise their discretion to prosecute someone for felony murder under these attenuated circumstances.[13] Put differently, Mr. Baxter could not have received LWOP in 45 of the 52 jurisdictions in the nation (counting D.C. and the federal system), either because they do not permit LWOP in these circumstances, or because his conduct could not support a felony-murder charge at all.[14] And in four of

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[13] In only two of those states—Arizona and Mississippi—would LWOP be mandatory. *See* Ariz. Rev. Stat. Ann. §§ 13-1105(A)(2), 13-752(A), 41-1604.09; Miss. Code Ann. §§ 97-3-19(2)(e), 97-3-21(1)(c), 47-7-3(1)(c)(i). In Georgia, Nevada, South Carolina, and Wyoming, LWOP would be an option for someone in Mr. Baxter's shoes but not mandatory. *See* Ga. Code Ann. § 16-5-1(e)(1); Nev. Rev. Stat. § 200.030(4)(b)(1); S.C. Code Ann. § 16-3-20(A); Wyo. Stat. § 6-2-101(b).

[14] Two states have no felony-murder statute at all, and eight do not provide LWOP as a sentencing option for felony murder. *See* Sentencing Project, Felony Murder: An On-Ramp for Extreme Sentencing, Appendix 2, (Apr. 2022), https://www.sentencingproject.org/app/uploads/2023/10/Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf. Of the

the states where LWOP would be possible, it is unlikely he would have received it, as those states' laws give sentencers discretion to impose a lesser sentence based on the facts of the case. *See supra* n.13.

The relative rarity of LWOP for someone in Mr. Baxter's circumstances confirms the conclusion that his sentence is grossly disproportionate. Indeed, in *Enmund*, the Supreme Court held that eight states—the number that then allowed the death penalty "solely for participation in a robbery in which another robber takes life"—constituted a "small minority of jurisdictions." 458 U.S. at 789-92. And in *Graham*, the Court held that LWOP for juvenile non-homicide offenses was "exceedingly rare"—even though *thirty-nine* jurisdictions permitted it—because, in practice, only eleven states "in fact impose[d]" it and "most of those [did] so quite rarely." 560 U.S. at 62-64, 67; *see also Miller*,

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remaining 42 jurisdictions (40 states plus D.C. and the federal system), 25 mandate LWOP for felony murder in some circumstances, and 17 permit but do not mandate it. *Id.* However, in nearly all of those jurisdictions, Mr. Baxter would not be eligible for LWOP, either because his conduct would not qualify as felony murder, or because the jurisdiction limits LWOP to cases with aggravating circumstances not present here. Citations to these state laws are presented in Attachments A and B, respectively.

567 U.S. at 483-84 (observing that prior cases had found a sentencing practice unusual when "less than half" of states permitted it).

While undersigned counsel have not found data on how many of the six states identified above "in fact impose" LWOP on persons in Mr. Baxter's shoes,[15] *Graham*, 560 U.S. at 64, one imagines it is rare. But even if (1) the prosecutors in all seven states (Florida and the six others that permit LWOP in this situation) pursue felony-murder convictions as aggressively as Florida did here, *and* (2) the sentencers exercise their discretion to impose LWOP even in these attenuated circumstances—both unlikely events—seven states is still one fewer than the number deemed a "small minority of jurisdictions" in *Enmund*, 458 U.S. at 789-92, and four fewer than authorized the sentencing practice the *Graham* Court deemed "exceedingly rare," 560 U.S. at 67.

In sum, comparing the severity of LWOP to Mr. Baxter's minor conduct and attenuated culpability raises a strong inference that his sentence is grossly disproportionate. Because both intra- and inter-

[15] "In most states, a felony-murder conviction gets lumped in with other types of murder, clouding the data." Stillman at 29, *supra* p. 11.

jurisdictional comparisons confirm that inference, Mr. Baxter's life-without-parole sentence is unconstitutional as applied. *See id.* at 60.

* * *

Even if AEDPA deference applied here—and it does not, as explained in Part III.A above—Mr. Baxter's case would meet it. Concluding that the Eighth Amendment permits imposition of mandatory LWOP on a young man solely because he committed a low-level, non-violent property crime with a person whom police subsequently engaged in a fatal high-speed chase constitutes an unreasonable application of the clearly-established principles in *Enmund*, *Tison*, *Graham*, *Miller*, and *Solem*. Mr. Baxter's petition should be granted.

CONCLUSION

Mr. Baxter respectfully requests that this Court reverse and remand for further proceedings.

Dated: August 2, 2024

Respectfully submitted,

s/ Christine A. Monta

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7) because it contains 12,999 words, excluding the parts of the motion exempted by Rule 32(f).

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s/ Christine A. Monta
Christine A. Monta

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2024, 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.

s/ Christine A. Monta
Christine A. Monta

Attachment A:

Jurisdictions where Mr. Baxter's conduct would not qualify as felony murder

State	Statutes
Arkansas	No underlying felony applies to Mr. Baxter's conduct. *See* Ark. Code Ann. § 5-10-101.
California*	No underlying felony applies here. Although burglary is an underlying offense for felony murder, Cal. Penal Code § 189(a), it requires entering a vehicle "when the doors are locked," *id.* § 459.
Delaware	No underlying felony applies here. While any felony can qualify as an underlying offense for felony murder, Del. Code Ann. tit. 11, § 636(a)(2), burglary requires entry into a building or dwelling, *id.* §§ 824–827, and Mr. Baxter's theft would only be a misdemeanor, § 841(c)(1).
District of Columbia	No underlying felony applies here. *See* D.C. Code § 22-2101.
Federal system	No underlying felony applies here. Although burglary is an underlying offense for felony murder, 18 U.S.C. § 1111, it requires forcible entry into a building or other structure and does not encompass vehicles, *see United States v. Reza-Ramos*, 816 F.3d 1110, 1130–31 (9th Cir. 2016) (citing *Taylor v. United States*, 495 U.S. 575, 599 (1990)).
Indiana	No underlying felony applies here. Although burglary is an underlying offense for felony murder, Ind. Code § 35-42-1-1(b), it requires forcible entry into a building or structure, *id.* § 35-43-2-1, which term does not encompass vehicles that are not "a person's home or place of lodging," *id.* § 35-31.5-2-107.

Iowa	No underlying felony applies here. Although first-degree burglary is an underlying offense for felony murder, *see* Iowa Code §§ 707.2(1)(b) (felony murder applies to "forcible felonies"),702.11(1) (defining "forcible felony" to include first-degree burglary), Mr. Baxter's conduct would not qualify as first-degree burglary, *see id.* § 713.3.
Louisiana	No underlying felony applies here. While aggravated burglary is an underlying offense for felony murder, La. Stat. Ann. § 14:30.1A(2), it requires either possession of a dangerous weapon or battery against a person, *id.* § 60.
Maryland	No underlying felony applies here. Although first-, second-, and third-degree burglary are underlying offenses for felony murder, Md. Code Ann., Crim. Law § 2-201(a)(4)(iii), they require breaking and entering into a dwelling or storehouse, *id.* § 6-202–04. Breaking and entering into a motor vehicle with intent to commit theft is a misdemeanor in Maryland and not an underlying offense for felony murder. *See* Md. Code Ann., Crim. Law § 6-206; *id.* § 2-201(a)(4).
Massachusetts*	No underlying felony applies here. Although burglary qualifies as an underlying offense for felony murder, *see* Mass. Gen. Laws ch. 265, § 1; *id.* ch. 266, § 14, it requires entering a dwelling house at nighttime, while armed, and does not include vehicles, *id.*

Michigan	Felony murder in Michigan, Mich. Comp. Laws § 750.316(b), has a *mens rea* requirement not applicable here: the defendant must have "acted with intent to kill or to inflict great bodily harm or *with wanton and willful disregard* of the likelihood that the natural tendency of his behavior is to cause death or great bodily harm." *People v. Aaron*, 299 N.W.2d 304, 329 (Mich. 1980) (emphasis added).
Minnesota*	Mr. Baxter could not be convicted of felony murder in Minnesota. First-degree felony murder requires "intent to effect the death of the person or another." Minn. Stat. Ann. § 609.185(3). Although second-degree felony murder encompasses unintentional deaths during the course of most felonies, *id.* § 609.19(subd.2)(1), Mr. Baxter's conduct would not be a felony in Minnesota. Burglary requires entry into a "building," *id.* § 609.582, which does not include vehicles, *see id.* § 609.581, and no other felony applies, *see, e.g.*, *id.* § 609.546 (unlawfully entering motor vehicles is a misdemeanor)
Montana	No underlying felony applies here. Although burglary is an underlying offense for felony murder, Mont. Code Ann. § 45-5-102(1)(b) (2013), it requires entry into an "occupied structure," *id.* § 45-6-204 (2009).
Nebraska	No underlying felony applies here. Although burglary is an underlying offense for felony murder, Neb. Rev. Stat. Ann. § 28-303, it requires forcible entry into "any real estate or any improvements erected thereon," *id.* § 28-507, and does not encompass vehicles.

New Hampshire	No underlying felony applies here. While burglary is a predicate offense for felony murder, N.H. Rev. Stat. Ann. § 630:1-a.I(b), it requires entry into a structure or vehicle "adapted for overnight accommodation of persons" while "armed with a deadly weapon," *id.*; *id.* § 635:1.
New Mexico	Felony murder in New Mexico, N.M. Stat. § 30-2-1.A(2), has a *mens rea* requirement not applicable here: "the State must prove that the defendant either intended to kill or knew that his or her acts created a strong probability of death or great bodily harm." *State v. Fry*, 126 P.3d 516, 527 (N.M. 2005).
New York	No underlying felony applies here. Burglary is an underlying offense for felony murder, N.Y. Penal Law §§ 125.25(3), 125.27(1)(a)(vii) (2013), but requires entry into a "building," *id.* §§ 140.25 (1981), 140.30, which includes only structures or vehicles designed for overnight lodging or carrying on business therein, *id.* § 140.00(2).
North Carolina	No underlying felony applies here. While burglary is an underlying offense for felony murder, N.C. Gen. Stat. § 14-17(a), burglary requires entry into a dwelling, *id.* § 14-51, and does not include vehicles.
North Dakota	No underlying felony applies here. Burglary is an underlying offense for felony murder, N.D. Cent. Code § 12.1-16-01(1)(c), but requires entry into a "building or occupied structure," *id.* § 12.1-22-02(1) (1973), which includes only structures of vehicles used for overnight lodging or carrying on business, *id.* § 12.1-22-06(4).

Ohio	No underlying felony applies here. Aggravated felony murder encompasses purposeful deaths during the course of a burglary but not unintentional deaths. Ohio Rev. Code Ann. § 2903.01(B). Non-aggravated felony murder encompasses unintentional deaths resulting from an *aggravated* burglary, *see id.* § 2903.02(B), *id.* § 2901.01(A)(9), but aggravated burglary requires both (1) either possession of a deadly weapon or harm or attempted harm of a person, and (2) entry into an "occupied structure," *id.* § 2911.11(A), which only includes vehicles maintained or adapted for dwelling or overnight accommodation, *see id.* § 2909.01(C); § 2911.11(C).
Oklahoma	No underlying felony applies here. While first-degree burglary is an underlying offense for felony murder, Okla. Stat. Ann. tit. 21, § 701.7(B), it requires forcible entry into a dwelling with someone inside, *id.* § 1431, and does not include vehicles, *see id.* § 1439.
Oregon	No underlying felony applies here. Although first-degree burglary is an underlying offense for felony murder, Or. Rev. Stat. Ann. § 163.115(1)(b), it requires entry into a dwelling, *id.* § 164.225, and only includes vehicles adapted for overnight accommodation or for carrying on business, *id.* § 164.205.
Pennsylvania	No underlying felony applies here. Although burglary is an underlying offense for felony murder, 18 Pa. Cons. Stat. § 2502(b), (d), it requires entry into an "occupied structure," *id.* § 3502 (2014), which only includes vehicles that are "adapted for overnight accommodation of persons, or for carrying on business therein," *id.* § 3501.

Rhode Island	No underlying felony applies here. Burglary and breaking and entering are underlying offenses for felony murder, 11 R.I. Gen. Laws Ann. § 11-23-1, but burglary incorporates the common law definition, *i.e.*, "the breaking and entering the dwelling-house of another in the nighttime," *see, e.g.*, *State v. Abdullah*, 967 A.2d 469, 476 (R.I. 2009) (referring to 11 R.I. Gen. Laws Ann. § 11-8-1 (1938)), and all breaking and entering offenses require entering into homes, buildings, railroad cars, or ships, 11 R.I. Gen. Laws §§ 11-8-2–5.1.
South Dakota	No underlying felony applies here. While burglary is an underlying offense for felony murder, S.D. Codified Laws § 22-16-4 (2005), first- and second-degree burglary require entry into an occupied structure, *id.* §§ 22-32-1, 22-32-3, and third-degree burglary explicitly excludes motor vehicles, *id.* § 22-32-8. While aggravated criminal entry of a motor vehicle has been prosecuted as fourth-degree burglary, *see State v.* Apple, 759 N.W.2d 283, 290 n.6 (S.C. 2008), that charge requires the entry to be "forcibl[e]." S.D. Codified Laws § 22-32-19; *see also id.* § 22-32-20 (entering a motor vehicle without the use of force, with intent to commit a crime, is a misdemeanor).
Utah	No underlying felony applies here. Although burglary and aggravated burglary are underlying offenses for felony murder, Utah Code Ann. §§ 76-5-203(2)(d), 76-5-203(1)(a), both require entry into a building, *id.* §§ 76-6-202–03, and only include vehicles adapted for overnight accommodation or business, *id.* § 76-6-201.

Vermont	No underlying felony applies here. While burglary is an underlying offense for felony murder, Vt. Stat. Ann. tit 13, § 2301, it requires entry into a building, and does not include vehicles, *id.* § 1201.
Virginia	No underlying felony applies here. Although burglary is an underlying offense for felony murder, Va. Code Ann. § 18.2-32, entering an automobile with intent to commit theft during the daytime constitutes burglary only if the automobile is "used as a dwelling or place of human habitation" and the person either "breaks and enters" or "enters and conceals himself," *id.* § 18.2-90, 18.2-91.
Washington	No underlying felony applies here. Although first-degree burglary is an underlying offense for felony murder, Wash. Rev. Code § 9A.32.030(1)(c), it requires entry into a building, *id.* § 9A.52.020 (1996), which is defined as only those structures or vehicles "used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods," *id.* § 9A.04.110(5).
West Virginia	No underlying felony applies here. Both burglary and breaking and entering are underlying felonies for felony murder, W. Va. Code § 61-2-1, but burglary requires entry into a dwelling, which includes only vehicles that are used for "human habitation," *id.* § 61-3-11, and Mr. Baxter could only be convicted of misdemeanor breaking and entering, *id.* § 61-3-12.

[*] California, Massachusetts, and Minnesota have all amended their felony murder laws to require a *mens rea* element that would exclude cases like Mr. Baxter's. *See* Cal. Penal Code § 189(a), (e)(3) (2019) (under

S.B. 1437, enacted in 2018, first-degree felony murder now requires that the defendant have acted with "reckless indifference to human life"); *Commonwealth v. Brown*, 81 N.E. 3d 1173, 1191 (Mass. 2017) (Gants, C.J., controlling opinion) (interpreting felony murder statute to require intent "to cause grievous bodily harm, or…to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result"); Minn. Stat. Ann. § 609.05(subd.2a)(a), (b) (2024) (under S.F. 2909, enacted in 2023, unintentional felony-murder liability under Minnesota's second-degree murder statute is now limited to only those who were a "major participant in the underlying felony and acted with extreme indifference to human life."). For purposes of this table, however, we analyze those states' laws as they existed at the time of Mr. Baxter's sentencing in 2014.

Attachment B:

Jurisdictions that provide or mandate life without parole (LWOP) for felony murder in some circumstances but where Mr. Baxter's conduct would not be eligible for an LWOP sentence

State	Statutes
Connecticut	Murder is penalized by imprisonment for a term of 25 years to life. Conn. Gen. Stat. § 53a-35a(2). Only felony murder with arson as the predicate felony, *id.* § 53a-54d, or murder with special circumstances, *id.* § 53a-54b, can carry a sentence of LWOP for crimes committed after April 25, 2012, *id.* § 53a-54a(c). Murder with special circumstances applies only to intentional murders. *See State v. Harrell*, 681 A.2d 944, 950 (Conn. 1996).
Idaho	The maximum sentence for felony murder where the defendant did not kill, intend a killing, or act with reckless disregard for human life, is life imprisonment with the possibility of parole after 10 years. Idaho Code §§ 18-4004, 19-2515.
Illinois	The standard sentence for murder in Illinois is 20-60 years. 730 Ill. Comp. Stat. Ann. § 5/5-4.5-20(a). Although the court may impose LWOP for felony murder in some circumstances, none of the triggering conditions exist here. *See id.* § 5/5-8-1(a)(1)(c) (2014); *see also id.* § 5/5-8-1(a)(1)(b-5)(4) (2024) (current version, reflecting Illinois's abolishment of death penalty).

Indiana	Mr. Baxter's conduct would not qualify as felony murder in Indiana, *see* Attachment A, but even if it did, he could not receive LWOP. To impose LWOP, a jury must find a statutory aggravating circumstance exists beyond a reasonable doubt. Ind. Code § 35-50-2-9(a), (l). None of these aggravating circumstances applies. *Id.* § 35-50-2-9(b); *see Pittman v. State*, 885 N.E.2d 1246, 1258–59 (Ind. 2008) (interpreting § 35-50-2-9 to mean that "the defendant must have been the sole killer or an active participant in the killing to be eligible for…life without parole").
Minnesota	Mr. Baxter's conduct would not qualify as felony murder in Minnesota, *see* Attachment A, but even if it did, he could not receive LWOP. *See* Minn. Stat. Ann. § 609.106(subd.2) (no aggravating factors that eliminate the possibility of parole applicable). Second-degree felony murder, which applies to unintentional deaths during a felony, is punishable by a term of years up to 40, not LWOP, *id.* § 609.19(subd.2)(1).
Montana	Mr. Baxter's conduct would not qualify as felony murder in Montana, *see* Attachment A, but even if it did, he could not receive LWOP. Ordinarily, a person sentenced even to life imprisonment is eligible for parole after 30 years. Mont. Code Ann. § 46-23-201(4). To receive LWOP for homicide, it must have been deliberate. *Id.* § 46-18-219.
New Jersey	Felony murder in New Jersey can carry a sentence of LWOP only in specific aggravating circumstances, none of which applies here. N.J. Stat. Ann. § 2C:11-3(b)(2–4).

Ohio	Mr. Baxter's conduct would not qualify as felony murder in Ohio, *see* Attachment A, but even if it did, he could not receive LWOP. Felony murder carries a maximum term of life with parole, Ohio Rev. Code Ann. § 2929.02, and while LWOP is mandated for aggravated murder, that charge requires that the death be caused purposefully, *id.* § 2903.01.
Rhode Island	Mr. Baxter's conduct would not qualify as felony murder in Rhode Island, *see* Attachment A, but even if it did, he could not receive LWOP. To receive LWOP for murder, one of seven aggravating circumstances must exist, none of which applies here. 11 R.I. Gen. Laws. § 11-23-2.
Tennessee	To sentence someone to LWOP for murder, at least one statutory aggravating circumstance must be found by a jury beyond a reasonable doubt, but none applies here. Tenn. Code Ann. § 39-13-204(e)–(f), (i).
Utah	Mr. Baxter's conduct would not qualify as felony murder in Utah, *see* Attachment A, but even if it did, he could not receive LWOP. Only aggravated murder carries the possibility of LWOP in Utah, Utah Code Ann.; *see id.* § 76-5-203(a)(ii), but for a murder to be aggravated, the death of an individual must be caused "intentionally or knowingly," *id.* § 76-5-202.

Virginia	Mr. Baxter's conduct would not qualify as felony murder in Virginia, *see* Attachment A, but even if it did, he could not receive LWOP. Murder in the first degree is only punishable as a class 2 felony, Va. Code Ann. § 18.2-32, which carries a sentence of twenty years to life with the possibility of parole, *id.* § 18.2-10(b). Only aggravated murder is a class 1 felony punishable by LWOP, *id.* § 18.2-10(a), but for a murder to be aggravated it must be "willful, deliberate, and premeditated," *id.* § 18.2-31. Additionally, LWOP was not added as an option for aggravated murder until 2021, when Virginia abolished the death penalty, and thus it would not have been available at the time of Mr. Baxter's sentencing. 2021 Virginia Laws 1st Sp. Sess. Ch. 345 (S.B. 1165); *see* Va. Code Ann. §§ 18-2-10(b) (2008), 53.1-151(1993) (aggravated murder punishable by death or life with possibility of parole).