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Tenth Circuit

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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JERRY DALE MEEK,

Petitioner - Appellant,

v.

JIMMY MARTIN,

Respondent - Appellee.

No. 20-7021

**Appeal from the United States District Court
for the Eastern District of Oklahoma
(D.C. No. 6:16-CV-00543-RAW-KEW)**

James L. Hankins, Edmond, Oklahoma, for Petitioner-Appellant.

Randall Yates, Assistant Solicitor General (Gentner Drummond, Attorney General of Oklahoma, Jennifer Miller, Deputy Attorney General, and Bryan Cleveland, Assistant Solicitor General, with him on the brief), Office of the Oklahoma Attorney General, Oklahoma City, Oklahoma, for Respondent-Appellee.

Before **HOLMES**, Chief Judge, **BALDOCK**, and **MATHESON**, Circuit Judges.

HOLMES, Chief Judge.

Petitioner Jerry Meek, an Oklahoma state prisoner convicted of first-degree murder, appeals from the district court's denial of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Specifically, he argues that the district court erroneously determined that the Oklahoma Court of Criminal Appeals ("OCCA") did not

unreasonably apply clearly established federal law related to his sufficiency-of-the-evidence, ineffective-assistance-of-counsel, and cumulative-error claims.

Exercising jurisdiction under 28 U.S.C. § 1291, we **affirm** the district court's denial of Mr. Meek's § 2254 petition.

I. BACKGROUND

This case arises from the 2002 disappearance of Hope Meek ("Ms. Meek"). Ms. Meek was last seen or heard from on February 21, 2002. At the time, she was living with her husband, Petitioner Jerry Meek ("Mr. Meek"), her young children with Mr. Meek, and her young child from a previous relationship, Jamie Kidd. Neither her body nor a murder weapon was ever found, and there were no confessions, physical evidence, or eyewitnesses to Ms. Meek's disappearance and presumed death. Ten years after her disappearance, the state charged Mr. Meek with her murder.

The State's case against Mr. Meek was entirely circumstantial. The prosecution focused on Ms. Meek's fear of Mr. Meek due to his history of domestic violence against her; Mr. Meek's concern that he would lose the couple's children or significant money in any divorce; and Mr. Meek's alleged affair with a coworker, which Ms. Meek discovered shortly before her disappearance.

The State also introduced evidence of suspicious activity by Mr. Meek at the time of Ms. Meek's disappearance. On the day of Ms. Meek's disappearance, Mr. Meek went to Wal-Mart to buy two 50-gallon storage containers, and nothing else; in a previous statement, however, Mr. Meek said he had bought camping supplies at that time (which a receipt and surveillance footage disproved). That afternoon, Mr. Meek removed a

rectangular patch of carpet from the bedroom and disposed of it in a dumpster several towns away. He then took the children for an impromptu weekday camping trip on a cold night; later, he drove over an hour out of the way into Texas before returning home that same night. Moreover, Mr. Meek did not report Ms. Meek missing until several days after her disappearance—only doing so, then, at the strong urging of Ms. Meek's family. The day after reporting her missing, Mr. Meek purchased next-day services to re-carpet his bedroom.

Mr. Meek appealed from the trial court's judgment to the OCCA after the jury returned its guilty verdict. But the OCCA evaluated—and denied—Mr. Meek's challenges in summary fashion. Notably the OCCA failed to include any factual findings regarding his sufficiency-of-the-evidence challenge. Instead, the OCCA simply concluded that "[i]n a light most favorable to the State, we find that any rational trier of fact could have found the essential elements of first degree malice murder beyond a reasonable doubt." Aplt.'s App. at 5 (Summary Op., filed Aug. 27, 2015).

In a more detailed analysis, on habeas review, the district court independently reviewed the state court record, ultimately concluding that the OCCA did not unreasonably apply the operative standards. In this regard, we acknowledge that "[f]actual findings of the state court are presumed correct unless the applicant rebuts that presumption by 'clear and convincing evidence.'" *Littlejohn v. Trammell* ("*Littlejohn I*"), 704 F.3d 817, 825 (10th Cir. 2013) (quoting 28 U.S.C. § 2254(e)(1)). However, where, as here, the state court's summary decision fails to evince the facts on which the court relied in denying a petitioner's claims, federal habeas courts are obliged to independently

review the state court's factual record. *See Aycox v. Lytle*, 196 F.3d 1174, 1178 (10th Cir. 1999) ("[W]e must uphold the state court's summary decision unless our independent review of the record and pertinent federal law persuades us that its result contravenes or unreasonably applies clearly established federal law, or is based on an unreasonable determination of the facts in light of the evidence presented."); *Gipson v. Jordan*, 376 F.3d 1193, 1196–97 (10th Cir. 2004) (independently reviewing the record where the OCCA "found that [the petitioner's] sentence was not the result of prosecutorial misconduct" but failed to "expressly state[]" its reasoning); *Jackson v. Okla. Dep't of Corrs.*, 18 F. App'x 678, 682 (10th Cir. 2001) (unpublished) (noting that, with respect to the petitioner's sufficiency-of-the-evidence challenge to the OCCA's summary decision, the district court properly "reviewed the evidence presented at trial and correctly determined that [the petitioner] had not satisfied the standard set out in § 2254(d)" and affirming "for substantially the same reasons set forth in the district court's . . . order")[1]; *accord Ayala v. Chappell*, 829 F.3d 1081, 1095 (9th Cir. 2016) ("For claims that the California court addressed only in its summary denial, 'we conduct an independent review of the record to "determine what arguments or theories . . . could have supported [ ] the state court's decision."'") (alteration in original) (quoting *Bemore v. Chappell*, 788 F.3d 1151, 1161 (9th Cir. 2015) (itself quoting *Harrington v. Richter*, 562 U.S. 86, 102 (2011))); *Williams v. Anderson*, 460 F.3d 789, 796 (6th Cir. 2006)

[1] We rely for support here and elsewhere in this opinion on persuasive nonprecedential decisions of panels of our court, fully aware that they are not controlling authority. *See* FED. R. APP. P. 32.1; 10th Cir. R. 32.1.

("Furthermore, the state court's failure to articulate reasons to support its decision is not grounds for reversal under AEDPA. . . . In such cases, we conduct an independent review of a petitioner's claims." (citing *Harris v. Stovall*, 212 F.3d 940, 943 (6th Cir. 2000))).[2]

When a habeas petitioner challenges the sufficiency of the evidence sustaining his conviction, such an independent review necessarily involves an examination of the evidence presented at trial. Consequently, in this case where relevant factual findings of the OCCA are absent, the district court independently reviewed the trial record, determining that the OCCA did not unreasonably apply Supreme Court precedent in concluding that the evidence sufficiently supported Mr. Meek's conviction.

In such circumstances, in conducting our own review, we are not bound by the district court's factual findings insofar as they are based entirely on the state-court record; rather, we independently review the record ourselves. *See, e.g.*, *Cunningham v. Diesslin*, 92 F.3d 1054, 1062 n.6 (10th Cir. 1996) (concluding that "the factual findings of the federal district court . . . . made on the basis of the state record . . . . are subject to this

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[2] As we noted in *Aycox*:

> [I]t is far preferable if the state court explains its reasoning because then we are not forced to guess as to the reasoning behind a determination. A state court's explanation of its reasoning would avoid the risk that we might misconstrue the basis for the determination, and consequently diminish the risk that we might conclude the action unreasonable at law or under the facts at hand. However, when presented with a summary disposition, as we are here, we will do our best under the standard of review mandated by AEDPA.

196 F.3d at 1178 n.3.

court's independent review of the record"). Accordingly, what follows is our own review of the state-court trial record. In conducting our review, we pay particular attention to the evidence that the jury heard regarding Ms. Meek's character and commitment to her family, the Meek marriage, the reported incidents of domestic violence in the months preceding Ms. Meek's disappearance, the events leading up to her disappearance, and Mr. Meek's conduct after Ms. Meek's disappearance.[3]

A. Hope Meek, Jerry Dale Meek, and Their Marriage

Ms. Meek was born in January of 1977, to Sheila Walker in Wellsville, Ohio. The family later moved to Wheeling, West Virginia, where Ms. Meek went to high school. Ms. Meek did not finish high school, as she left in 1994 at the age of sixteen to marry Brian Kidd. By nineteen, in March 1996, she gave birth to a daughter, Jamie Kidd. But Ms. Meek's marriage to Mr. Kidd dissolved, and approximately three years later, in December 1999, Ms. Meek married Mr. Meek in Oklahoma. They appear to have lived early in the marriage in Hochatown, Oklahoma. The couple welcomed a son that same month, December, when Ms. Meek was twenty-two, and thereafter a daughter in March 2001.

None of Ms. Meek's extended family lived in Oklahoma, but the jury heard evidence that, through work and school, Ms. Meek tried to carve out a life for herself in

[3] Through his ineffective-assistance claims, Mr. Meek has challenged the admission of some of the evidence against him at trial, for example on hearsay grounds. Notably, however, "when considering a challenge to the sufficiency of the evidence, we consider all evidence admitted at trial, even if admitted improperly." *Davis v. Workman*, 695 F.3d 1060, 1078–79 (10th Cir. 2012).

the small town of Valliant. During her marriage, Ms. Meek worked part-time at a local E-Z Mart, taking shifts one to two days a week. Ms. Meek was, according to assistant manager Beverly Abbott, an exemplary employee who "was very conscience [sic] of her work, always on time" and "never missed work unless one of the kids were [sic] sick," and even then, Ms. Meek would give notice. Aplt.'s Supp. App., Vol. 6, at 311, 317 (Test. of Beverly Abbott) (Trial Tr., Vol. 2).[4] In addition to working part-time, Ms. Meek took classes at the local college, the ET Dunlap Center, often with her two youngest children in tow.

Both the State's case and Mr. Meek's defense were premised, in part—albeit in different ways—on the powerful effect the children had on Ms. Meek. According to several of the State's witnesses, Ms. Meek was a devoted mother. For example, though Ms. Abbott's shifts overlapped with Ms. Meek's only occasionally, she saw her as a customer "two to three times a week," and "every time she came in th[e] store [Ms. Meek] would have her kids with her." *Id.* at 313. Another witness, Tonya Schooley, testified that Ms. Meek "was a very good mother" who "was excited about all of her children." *Id.* at 425–26 (Test. of Tonya Schooley) (Trial Tr., Vol. 2). Ms. Meek shared her excitement concerning her children with her mother, Ms. Walker, who testified that

[4] When citing to portions of the trial transcript in Appellant's Supplemental Appendix, we cite to the black page numbers from the trial transcript, which appear in the top righthand corner of each page. We take this approach to maintain consistency with the approach taken by the parties on appeal and by the district court in its Opinion and Order below. For citations to any other source in Appellant's Supplemental Appendix, we cite to the green page numbers associated with each volume of the supplemental appendix.

her daughter would mail or email her photographs of her three grandchildren, including photographs of them playing at a park. And Antoinette Ricks, a friend that Ms. Meek made at school, observed that Ms. Meek and her children were "very close"—with her young son, then a toddler, being particularly "attached" to his mother. *Id.* at 357, 355 (Test. of Antoinette Ricks) (Trial Tr., Vol. 2). Ms. Ricks testified that Ms. Meek "loved" her children, *id.* at 357, and would never leave them. Ms. Abbott echoed that opinion: "there[] [was] no way she would have left her kids voluntarily." *Id.* at 319.

If the State sought to portray the children as a powerful reason for Ms. Meek to stay in Valliant, Mr. Meek's defense aimed to show they had the exact opposite effect. According to Mr. Meek, Ms. Meek's dissatisfaction with her children and disillusionment with motherhood motivated her abrupt departure. Mr. Meek's witnesses painted Ms. Meek as an inattentive, ambivalent, and heedless parent—one who neither supervised her children during playtime nor changed her newborn daughter's diapers. In this vein, Mr. Meek testified that Ms. Meek never wanted to have a second (or third) child and sought "an abortion." *Id.*, Vol. 8, at 999–1000 (Test. of Jerry Meek) (Trial Tr., Vol. 4). In short, Mr. Meek hoped to convince the jury that "Valliant didn't hold anything"—including children—"for [Ms. Meek]," and she left. *Id.*, Vol. 7, at 711 (Opening Statement of Defense Counsel) (Trial Tr., Vol. 3).

Further, the defense sought to portray Mr. Meek as a gentle "family man." *Id.*, Vol. 8, at 908 (Test. of Janie Oney) (Trial Tr., Vol. 4). According to his witnesses, Mr. Meek would go "straight home" after work to take care of the baby or would "run[] to the store for milk" and other supplies. *Id.* at 866 (Test. of Renee Meek) (Trial Tr., Vol. 4).

Witnesses also described seeing Mr. Meek, unlike Ms. Meek, playing with his children. He was also said to be "good tempered," *id.* at 908, and never, according to witnesses, displayed any tendency toward frustration with his subsequent common law wife, Tiffany Oney. In fact, Mr. Meek was so even-keeled that Charles Raley, Mr. Meek's former colleague at a Weyerhaeuser-operated mill, recounted a time when one of their coworkers intentionally sprayed Mr. Meek with a high-pressure hose. Instead of reacting angrily, Mr. Meek "didn't do anything" other than "change[] his T-shirt and [go] back to work." *Id.*, Vol. 8, at 962 (Test. of Charles Raley) (Trial Tr., Vol. 4).

Though the State and the defense painted divergent portraits of Mr. and Ms. Meek, both sides agreed that the Meek Marriage was far from a happy one. Ms. Walker, for instance, observed that Mr. Meek would sometimes be "short" with his wife in her presence, *id.*, Vol. 6, at 254, and Ms. Abbott testified that she once visited Ms. Meek only for Mr. Meek to "show[] up" and question "what [Ms. Abbott] was doing there," *id.* at 314. Ms. Abbott noticed that Ms. Meek "got real nervous and fidgety," and, sensing conflict brewing between the two, Ms. Abbott left. *Id*. at 314–315. Still, while Ms. Abbott saw Mr. Meek "upset," she had never seen him "lose his temper." *Id.* at 321.

Mr. Meek attempted to show that it was in fact *Ms. Meek* who was the controlling, abusive partner in their marriage. Ladonna Darby, a former daycare worker and one of Mr. Meek's witnesses, recounted a time when Ms. Meek "bragg[ed] about slashing [Mr. Meek's] tires . . . because he wouldn't give her money." *Id.*, Vol. 8, at 895 (Test. of Ladonna Darby) (Trial Tr., Vol. 4). And Mr. Meek's mother, Renee Meek, testified that Ms. Meek threatened to throw a rock through her car's windshield and once hit Mr. Meek

with a broom, leaving him with "little red dots all over his face." *Id.* at 871, 865. Renee Meek further testified that Ms. Meek "made it clear [that] she didn't want [Mr. Meek] having anything to do with any of his family." *Id.* at 866.

Perhaps unsurprisingly, the couple separated multiple times, first in 1999, when Mr. Meek filed for divorce. But the divorce never materialized—and Mr. Meek's testimony helped the jury understand why:

> [Ms. Meek] said that [the family court] judge ain't going to give a man custody of a kid unless you prove the mom unfit. And I said well, when a judge hears everything you have done there ain't no way he will give you custody of [our son]. She said, you can't prove nothing. She's right; I couldn't prove it. It would have been my word against hers. If I had went [sic] through with the divorce[,] there's no doubt she would have gotten [custody of our son].

Id., Vol. 9, at 1003–04 (Test. of Jerry Meek) (Trial Tr., Vol. 5).

Mr. Meek claimed he dismissed his divorce action in March of 2000 to ensure continued access to his son, and the family moved to Valliant, at Ms. Meek's insistence, in July of 2000. Shortly after moving to Valliant, Ms. Meek informed Mr. Meek that she was pregnant, and, according to him, was "adamant about getting an abortion." *Id.* at 1005. Mr. Meek insisted that she not, reportedly telling her that, "legally," she "c[ould not] get an abortion without [his] consent[]." *Id.* Ultimately, Ms. Meek gave birth to a daughter, her youngest, in March of 2001.

But in Mr. Meek's view, the addition of a third child to the household resulted in added stress for Ms. Meek and precipitated "the worst part of [their] relationship." *Id.* at 1010. Their newborn was "sickly," going "through dozens of different types of

formulas," and Mr. Meek was working "[t]welve[-]hour shifts, seven days a week" at the mill. *Id.* at 1008–09. Adding to his troubles, Mr. Meek told the jury of a time when, coming home from work, he "walked in the front door" of their home and found Ms. Meek "laying [sic] on the couch with just a t-shirt on, no panties or nothing, and over to the right side of the room [was] her boyfriend sleeping in [Mr. Meek's] recliner." *Id.* at 1010.

In either July or September 2001, the Meeks separated a second time. Ms. Meek moved herself and the children to downtown Valliant, where she applied for social-service benefits, including food stamps, medical care, and day care. Mr. Meek testified that even when separated, he still financially supported Ms. Meek, writing her multiple checks for several hundred dollars. This, too, was stressful for Mr. Meek, as he felt like he "couldn't never give her enough money to keep her happy." *Id.* at 1020.

If the separation left Mr. Meek feeling frustrated, the jury heard, in contrast, that it was a seemingly positive development in Ms. Meek's life. According to Ms. Ricks, Ms. Meek's friend from college, the second separation "changed" Ms. Meek's "whole demeanor." *Id.*, Vol. 6, at 360. Whereas Ms. Meek was once "timid," "had her head down all the time," and "wouldn't really look at you in your face and talk," following the separation she became "more active" and "talkative"—an evolution that Ms. Ricks credited to her "learning that there was a better life . . . [and that] there was something else out there." *Id.* at 359–360. Ms. Ricks further relayed that Ms. Meek was particularly "proud" that she had purchased a pickup truck and "was going to school," *id.* at 360, much to Mr. Meek's disapproval. And there were signs that the petite Ms.

Meek—who was 5'2" and weighed only 95 pounds—sought to develop self-defense skills. Ms. Ricks described a "conversation" in which "[Ms. Meek] had spoken [about] getting self-defense classes for women who had been through domestic violence. And she didn't want anybody to know that she was fixing to have those classes." *Id.* at 361.

B. The Events of November 2001

The jury heard evidence that the Meeks went through a particularly volatile—and violent—period following their separation. On November 9, 2001, Ms. Meek filed a police report alleging that Mr. Meek "picked her up and threw her out the door on to the concrete porch" of their home after she inquired about who called him during a family dinner. Former police officer Dennis James did not see any scratches on Ms. Meek but noted that he could not see her ribs—which were reportedly sore—to confirm any injury. And, in any event, Ms. Meek did not want to press charges.

During trial, Mr. Meek explained that the November 9, 2001, fight concerned money. As he put it, Ms. Meek was upset that he put a down payment on a four-wheeler costing $6,000 and demanded $6,000 from him. When Mr. Meek refused to give her money—saying that he "was giving her $1[,]000 a month . . . if not more" in "party money"—Ms. Meek angrily left. *Id.*, Vol. 9, at 1025. Mr. Meek denied having touched Ms. Meek.

Officer James had occasion to visit the Meeks together ten days later, on November 19, 2001, in response to a domestic-disturbance report at the Meek residence. Ms. Meek claimed that Mr. Meek "raked all the cans out of the cabinet" before "ben[ding] down," "hit[ting] [her] right ear," and "kick[ing] [her] legs from under [her,]

knocking [her] to the ground." *Id.*, Vol. 6, at 263–64. Officer James did not observe any signs of injury on Ms. Meek, despite her allegations.

When Officer James interviewed Mr. Meek, he offered a somewhat different version of events. According to Mr. Meek, Ms. Meek was over by the cabinets but was "[s]lamming doors [and] pans" and threatening to seek "sole custody of the kids." *Id.* at 272. In addition, Ms. Meek allegedly said that "everything here is hers[,] as well as what's at her house. And she can take whatever she wants." *Id.* Mr. Meek, apparently, was not "surprise[d]" that Ms. Meek "told the police" that he hit her, because she allegedly "said in the past many times that she was going to ruin [his] life, make [him] miserable[,] [and] . . . get [him] fired from work." *Id.* Mr. Meek speculated that the "only" reason why Ms. Meek did not have him "thrown in jail," was that an arrest would cause him to "lose [his] job." *Id.* He continued:

> She has also told me that she can call the police on me [and] say that I have abused her [and] that they will believe her because she is a woman [and] about half my size [and] she has made friends with some police. We have been separated . . . and she comes over here all the time starting trouble [and] *using the kids as a weapon against me*. She knows that is my *weak link* to get me to do whatever she wants and pay her bills when she spends her money on other things. And whenever I put my foot down or disagree with her she throw[s] a fit.

Id. at 273 (emphases added).

Mr. Meek's testimony at trial, however, included information that he omitted from his statement to Officer James. Specifically, Mr. Meek testified that, when Ms. Meek came over to his house "and started getting food out of the cabinets and putting it in a box to take back to her house," he asked why Ms. Meek was "coming over [t]here" to get

provisions when she received food stamps. *Id.*, Vol. 9, at 1021. Ms. Meek allegedly responded by saying that "food stamps [were] . . . the same as cash if you kn[e]w the right person." *Id.* After that, Mr. Meek "raked all the cans of food off into the box . . . and . . . told [Ms. Meek] [to] take all of the food" and leave. *Id.* at 1022.

Though Officer James had not observed any signs of injury on Ms. Meek, and though Mr. Meek maintained he never abused her, other witnesses saw signs of foul play. Ms. Ricks testified that she saw "[b]ruising" one time on Ms. Meek's leg and "another time" on her chest or neck. *Id.*, Vol. 6, at 364. And in the days immediately before Ms. Meek's disappearance, several witnesses observed signs of physical injury on her body. *See, e.g.*, *id.* at 421, 424 (Ms. Schooley testifying that, on February 20, 2002, she saw bruises on "the back part of [Ms. Meek's] neck" and the "lower part of her arm," and "close to the back of her spine").

C. The Events of February 19, 2002

Despite the continued discord, the 2001 separation was short-lived, and Ms. Meek returned to the house that she co-owned with Mr. Meek in early 2002. In explaining their reconciliation, Mr. Meek said that Ms. Meek benefitted financially from preserving their relationship and that he averted "the worst [thing] that could have happened" to him: Ms. Meek "mov[ing] off" and "tak[ing] the kids"—something she had threatened to do before "whenever she was trying to get at [Mr. Meek] or . . . wanting something" from him. *Id.*, Vol. 9, at 1028. Mr. Meek felt this pressure acutely with respect to Ms. Meek's daughter from her first marriage, Jamie. While Mr. Meek had helped raise Jamie "since she was two years old," he "knew [he] had no toe hold" as a legal guardian and that Ms. Meek "at

least [was] taking Jamie" if they divorced. *Id.* Mr. Meek, in short, was "between a rock and a hard place." *Id.* at 1127.

Still, though Ms. Meek had returned to the marital residence, Mr. Meek found his wife's lifestyle incompatible with their marriage: as he saw things, "nothing ha[d] changed from the way it was . . . . I mean, [Ms. Meek] [was] still run[ning] around and whoring and stuff." *Id.* at 1029. By February, the pair were fighting again. One witness, Penny Howell, testified that Mr. Meek visited the home that she shared with her then-husband, Kelly Howell, on February 9, 2002, to blow off steam on a four-wheeler. According to Ms. Howell, Mr. Meek appeared "angry" and told Ms. Howell's husband that he and Ms. Meek had been fighting. *Id.*, Vol. 6, at 390–91. As she remembered it, "[Mr. Meek] said he wanted to go riding to get away." *Id.* at 391.

Ten days later, on February 19, 2002, Ms. Meek placed three phone calls evidencing her state of mind around the time of her disappearance. Ms. Meek called Helen Lawrence, the Oklahoma Department of Human Services caseworker managing her benefits, and "told [her] that she wanted to close her cases, she wanted her medical and her daycare closed because she was getting back with her husband." *Id.* at 333. At around 11:00 a.m., she called Ms. Howell. Though Ms. Meek did not personally know Ms. Howell—the wives knew of each other through their husbands—Ms. Meek said that she had "information she thought [Ms. Howell] should be aware of." *Id.* at 392. During the call, Ms. Meek informed Ms. Howell that Mr. Howell was having an affair. Ms. Howell then offered some information of her own, telling Ms. Meek that Mr. Meek "was cheating on her[,] too." *Id.* at 400.

For the next two-and-a-half hours, the two bonded over their marital troubles, including a shared history of abuse at the hands of their husbands. Ms. Howell confided in Ms. Meek that Mr. Howell had broken her nose and arm and choked her**,** and Ms. Meek described how Mr. Meek would "push, shove, [and] choke" her. *Id.* at 402. Regarding the times Mr. Meek choked her, Ms. Meek recounted two specific incidents. For the first, "she said he was choking her on the couch and that her little boy came in and that she feared for her life . . . and she felt like [her son] saved her life or that he got [Mr. Meek] to stop." *Id.* As for the second incident, one of Ms. Meek's daughters was crying, and Ms. Meek "couldn't stop her from crying." *Id.* at 403. Mr. Meek "came in the kitchen and choked her and pinned her up against the refrigerator." *Id.*

Ms. Howell suggested that Ms. Meek leave Mr. Meek and encouraged her to "stay with family." *Id.* at 406. Ms. Meek was "upset" over news of the affair, *id.* at 405, "rumors" of which she had heard before, *id.* at 404. However, she was adamant about staying in Valliant, telling Ms. Howell "[t]hat she didn't want a divorce," as she "had been divorced before," was "taking classes" at the local college, and, in any event, "loved [Mr. Meek.]" *Id.* at 403. Nevertheless, Ms. Meek told Ms. Howell that she planned on confronting Mr. Meek over news of his infidelity. Later that evening, around 7:00 p.m., Ms. Meek called Ms. Howell again. Ms. Howell missed her call.

D. The Events of February 20, 2002

The day before her disappearance was a tumultuous one for Ms. Meek. Attempting to confirm the affair allegations, Ms. Meek called Mr. Raley, Mr. Meek's Weyerhaeuser colleague, in the early hours of February 20, 2002. Mr. Raley, who

testified as one of Mr. Meek's witnesses, told the jury of a middle-of-the-night phone call he received from Ms. Meek:

> She called me in the middle of the night and when I say middle of the night I mean like 2:00 or 3 o'clock in the morning. And the first thing she said . . . is do you have a minute to talk. I said Hope, it's 3 o'clock in the morning; but yeah, I guess so . . . . Her exact words were "I hear that [Mr. Meek] is fucking [a female colleague.]" And it kind of shocked me especially being 3 o'clock in the morning. . . . And I said, "Hope, I have not heard anything. I mean [Mr. Meek] and I work side by side." That was not even — that wasn't possible; I knew it wasn't possible. But anyway I said no, no; that's not happening. And she said, "if it was, would you tell me?" And I said, "no" and she hung up the phone.

Id., Vol. 8, at 965–66.

According to Mr. Meek's trial testimony, Ms. Meek confronted him about the affair later that morning when he came home from work. As the pair were arguing, Jamie "asked [them] if she could watch cartoons." *Id.*, Vol. 9, at 1037. After sending the kids downstairs to watch television, Mr. Meek and Ms. Meek "called a truce," *id.* at 1038, which broke down in the early afternoon—around "2 o'clock" or "3 o'clock"—where, during another argument, he admittedly "took her by the shoulders and held her to the floor," allegedly in self-defense, *id.* at 1098, 1097.

Mr. Meek also recounted the events of February 20th to Oklahoma State Bureau of Investigation ("OSBI") Agent Cliff Fielding on February 28, 2002. At trial, Agent Fielding testified that Mr. Meek told him that Ms. Meek "confronted him about an affair" on February 20th. *Id.*, Vol. 7, at 549 (Test. of Agent Fielding). Mr. Meek further reported that they "scuffled" over the keys to his Chevrolet pickup truck and that Ms. Meek "hit him several times." *Id.* According to Mr. Meek, Ms. Meek had intended "to

drive his truck away" to his mistress's house and "confront [her] about [the] alleged affair." *Id.* Mr. Meek "admitted that he pushed [Ms. Meek] down between the coffee table and pillars by the family room" and that two of the children—Jamie and their son—"were at the house" when the fight occurred. *Id.* Mr. Meek then left the house around 2:30 p.m. and reported to work.

At some point that day, Ms. Meek called Joe Williams, Mr. Meek's supervisor at the Weyerhaeuser mill, requesting that his shift be changed so that he no longer worked with his alleged mistress. According to Mr. Williams, Ms. Meek became "very upset when [he] refused to make the change" and "threatened to sue [him] for causing their divorce." *Id.* at 508–09 (Test. of Joe Williams) (Trial Tr., Vol. 3). Mr. Williams subsequently met with Mr. Meek to discuss Ms. Meek's "call and request" and to offer Mr. Meek the use of Weyerhaeuser's "employee assistance" program, which includes "counselling for various things." *Id.*

Mr. Meek's statements to Agent Fielding echoed this account and Mr. Meek reported an additional argument he had with Ms. Meek in the Weyerhaeuser parking lot. At trial, Mr. Meek testified about additional details relating to this parking-lot argument with Ms. Meek, stating that the continuation of their dispute at his workplace prompted him to suggest that they relocate to Valliant Park. Shortly after 4:15 p.m., Mr. Meek arrived at the park and "told [Ms. Meek] that if [their relationship] keeps going like this . . . we're going to end up getting a divorce." *Id.*, Vol. 9, at 1041. Mr. Meek also allegedly informed Ms. Meek that he had secretly recorded some of their arguments and "had something on her." *Id.* at 1043. According to Mr. Meek, they were not able to

resolve any of their conflicts during that meeting, and Mr. Meek returned to work around 6:00 p.m.

That evening, several witnesses spoke with Ms. Meek or saw her and observed signs of physical injury. Searching for her friend, Rocky Dunithan, Ms. Meek encountered Robbie Gerald McDaniel, Mr. Dunithan's cousin and roommate. Mr. Dunithan was not home, so Mr. McDaniel spoke with Ms. Meek; he said that Ms. Meek seemed upset. According to Mr. McDaniel, Ms. Meek described a "fight" between her and Mr. Meek; she claimed that Mr. Meek "threw" her "down on the ground," resulting in glass lodging into "the back of her neck and her arm." *Id.*, Vol. 6, at 378 (Test. of Robbie Gerald McDaniel) (Trial Tr., Vol. 2). Ms. Meek showed Mr. McDaniel her injuries, which included a scratch on her arm and a wound on the back of her neck.

Ms. Meek also reached out to Ms. Ricks, her friend from the local college: talking about Ms. Meek, Ms. Ricks stated, "[s]he called me the day before she come [sic] up missing and I missed that phone call." *Id.* at 364. As with the other witnesses, that was the last time Ms. Ricks would hear from Ms. Meek.

Later, Ms. Meek spoke with her mother, Ms. Walker, with whom she spoke daily. When Ms. Meek called the night of the 20th, however, she reported an alarming episode between her and Mr. Meek:

> She was extremely upset, she was crying. She was crying to the point where she was gagging. She said that Jerry had beat her, that she had glass in her back, her arm, her buttocks. She was just—she was very distraught. Her children needed her and she couldn't get up and help her children.

Id., Vol. 5, at 233.

According to Ms. Walker, Ms. Meek claimed that Mr. Meek "had . . . pushed" her "down on a glass-top coffee table," leaving her with "glass in her hand" in a house with "nothing . . . to take for pain." *Id.* Ms. Walker encouraged her daughter to leave, but Ms. Meek "was afraid to move away" because "[Mr. Meek] wouldn't let her take the kids and she couldn't give her kids up." *Id.* Ultimately, Ms. Meek agreed to meet Ms. Walker in Mississippi to "help get the children" to her house in Florida. *Id.* at 234. Ms. Walker wired her daughter $200 to pay for the trip, and they agreed to talk again the next morning, February 21st. But Ms. Meek never called. That was the last conversation the two would have.

That same evening, Ms. Meek contacted Ms. Schooley, an acquaintance whom she knew through her former neighbor, Richard Mortenson, and asked if she could bring her some Excedrin. When Ms. Schooley arrived and Ms. Meek walked outside, Ms. Schooley noticed that "[s]he was walking very slowly" and appeared "sore." *Id.*, Vol. 6, at 423. When Ms. Meek approached Ms. Schooley, she told her that she "and [Mr. Meek] had got[ten] into it and he had thrown her down in the front yard," *id.*, after she "questioned him about an affair," *id.* at 425. Ms. Meek then showed Ms. Schooley the bruises she had, which were visible to Ms. Schooley under street lighting and a flood light in the front yard. Ms. Schooley specifically saw bruises on "the back part of [Ms. Meek's] neck," the "lower part of her arm," and "close to the back of her spine." *Id.* at 424. That, too, was the last time Ms. Schooley saw Ms. Meek.

Ms. Abbott also remembered seeing Ms. Meek the evening of the 20th. Ms. Meek had come into the E-Z Mart and asked Ms. Abbott if she "had seen [Mr. Meek] talk to

anybody in [a] white car," to which Ms. Abbott responded that she had not. *Id.* at 316. According to Ms. Abbott, Ms. Meek appeared "nervous, fidgety" and "just wasn't right." *Id.* at 317. Ms. Meek said that she would see her friend and colleague, Ms. Abbott, "in a couple days" and left. *Id.* Ms. Meek never came into work as scheduled after that encounter.

For his part, Mr. Meek reached out to two people that day: Mr. Howell and Ms. Howell. Mr. Howell testified that, on February 20th, Mr. Meek told him "[t]o keep my bitch on a short leash," referring to Ms. Howell's disclosure of his affair to Ms. Meek. *Id.* at 439. Mr. Meek also directly spoke to Ms. Howell later that evening. According to her:

> [Mr. Meek] called and his tone was very angry, and he told me to mind my own business, that he had already told [my husband] and he was going to tell me to not be telling [Ms. Meek] anything, not be giving her advice, and he left it with if you know what's good for you. And that was the end of the conversation.

Id. at 407.

E. The Events of February 21, 2002

February 20th marked the last time most of the State's witnesses saw or heard from Ms. Meek. However, four sets of Mr. Meek's statements offer insight into Ms. Meek's whereabouts on February 21st: (1) a missing person report he filed on February 26, 2002; (2) his comments to Agent Fielding during the February 28, 2002, interview; (3) testimony he gave during a January 28, 2003, guardianship hearing (the "2003 Guardianship Hearing"); and (4) his testimony at trial. Further, Jamie provided statements regarding her final observations of her mother to Vicki Bell, a former

investigator with Oklahoma's Department of Human Services. Under the State's view, these statements, in part, pertain to Ms. Meek's whereabouts on February 21st. At trial, Jamie could not recall her statements made to Ms. Bell ten years earlier, prompting the state trial court to permit Ms. Bell to testify as to Jamie's prior statements. *See* Aplt.'s Supp. App., Vol. 6, at 459–63, 470 (Test. of Vicki Bell) (Trial Tr., Vol. 2).

1. The February 26th Missing Person Report

The events leading up to Mr. Meek's February 26th missing person report are notable. Concerned by Ms. Meek's failure to call that day, Ms. Walker (Ms. Meek's mother) called the Meek residence, which contained a landline, on the evening of February 21st, a Thursday. When no one picked up or returned her call, Ms. Walker kept calling, to no avail. Moreover, because Ms. Meek, who was normally a reliable employee, did not report to work that day, Ms. Abbott also "tried calling her cell phone"—which Ms. Abbott had never seen her without—but Ms. Meek "did not answer." *Id.* at 317–18, 315.[5]

On February 26, 2002, Ms. Meek's father called Ms. Abbott wanting to know "if [Ms. Meek] was [at the E-Z Mart] or if [Ms. Abbott] had seen her." *Id.* at 318. So, Ms. Abbott called Ms. Meek's cell phone again. This time, Mr. Meek answered. Ms. Abbott

[5] Ms. Abbott was not the only witness to never see Ms. Meek without her cell phone. Ms. Ricks similarly testified that she, too, "[n]ever" saw Ms. Meek "without the cell phone." Aplt.'s Supp. App., Vol. 6, at 358. During trial, Mr. Meek testified that, in addition to a cell phone, Ms. Meek possessed a "Trac phone" that he had seen her use "fairly recently" prior to her disappearance. *Id.*, Vol. 9, at 1044–45. This type of phone is a mobile one (i.e., wireless); ordinarily, owners of them prepay for a specific number of minutes that they may use the phone for communicating with others. *See generally How Do Tracphones Work?*, TECH-FAQ, https://www.tech-faq.com/how-tracphones-work.html (last visited on July 8, 2023).

asked to speak with Ms. Meek, but Mr. Meek reported that she was "not here," prompting Ms. Abbott to explain to him that Ms. Meek's "dad [was] looking for her and want[ed] her to call." *Id*. Mr. Meek said that he would "give her the message when [he] s[aw] her." *Id.*

According to Mr. Meek's version of events, he charged Ms. Meek's cell phone and discovered several voicemail notifications, which led him to call her family. When he did, Ms. Walker told him to "hang up and call the police and report her missing because that's what [she and her family] were going to do." *Id.*, Vol. 5, at 237.

Officer James—the same officer to respond to Ms. Meek's November 2001 domestic violence complaints—took the missing person's report that evening. When Officer James entered the kitchen of the Meek residence, he saw that Mr. Meek had already composed a statement—a level of preparedness that Officer James found strange, given that he had not asked Mr. Meek for a written accounting of events. In the statement, which we quote in full, Mr. Meek outlined his version of the events of February 21, 2002:

> I came home at about 6:45 A.M. Thursday 21st and [Ms. Meek] was asleep in [their son's] bed. So, I layed down in our bed and a little while later she came in and said I needed to get Jamie up, that she had something to do. So I woke up Jamie and started her bath, made [their infant daughter] a bottle and changed her. I layed back down and Jamie came back in and wanted me to brush her hair because mamma was gone. So I finished getting her ready and got her off to school and then went back to bed and a little while later she [i.e., Ms. Meek] came in throwing a fit and said she was sick and tired of everybody's bullshit and getting shit on all the time and can't take it anymore. And that she was leaving and should have done it a long time ago. And I asked her where she was going?

> To your mamma's, she said no. That she is going somewhere where nobody knows her, where I can't find her and start over again. A new life. And I told her that she might be able to go somewhere new and start over, but the kids will show up in the school system and I will find them. And she said she ain't taking the kids. That she can't handle the stress and couldn't afford them the life that they deserve and would not make them live on the road. And said she didn't want anything that is mine or anything that has to do with me. Then she said she wanted me to take the kids somewhere until she leaves, that it would be easier on the kids if they didn't see her leave. And that she needed some money. And I asked her how much. She said however much I could spare. So I got the younger two kids up and went down stairs. And I tried to get some rest on the couch. Then decided to take the kids to daycare. I went to the bank and got some money. Went to Wal-Mart to get some camping stuff. Came back home and got the camping stuff together and took a little nap, got up, loaded up the camping stuff, and left $500 on the counter, called and reported off work and went to daycare to pick up the kids and ask them if they wanted to go camping and they said yes.[6] (They been wanting to go for a long time.) So we drove around for a while looking for a spot to camp. We put the tent up and everybody was cold. And didn't seem to be having fun. So we loaded up the stuff and went driving around for a while, trying to figure out where to go and what to do. Stopped and got the kids some snacks in Broken Bow (Love's). Went to Paris [i.e., Paris, Texas] and bought lotto ticket and then came home about midnight. Her truck was still there, went inside and looked around. She was gone. The money was gone. Her cell phone and keys was [sic] on the counter where the money was. I haven't seen or heard from her since. I kinda figured she would cool off and come back but then again she sounded pretty serious. But by Tuesday night I figured I would call her parents to see if they knew anything. They said they haven't heard from her in a few days and the last time they heard from her we were fighting. So they said they were going to call in a missing person [report]

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[6] Mr. Williams's testimony corroborated Mr. Meek's assertion that he called off of work. Mr. Williams also testified that, owing to a combination of vacation days and a scheduled long weekend, Mr. Meek was effectively off of work for two weeks beginning on February 21, 2002.

> and for me to do the same. So Tuesday night I called the Sheriff's Dept.

Id., Vol. 12, at 12–13 (State's Ex. 5).

Mr. Meek also gave Officer James an oral statement, telling him that he thought Ms. Meek was living near, or with, "Richard," with whom she "had a thing going on." *Id.*, Vol. 6, at 276 (Test. of former Officer Dennis James). Mr. Meek acknowledged that his speculation sounded like the stuff of "a jealous husband," and when Officer James told him that "Richard" had reconciled with his own wife, Mr. Meek claimed that she and Ms. Meek were "friends and . . . run around together." *Id.* And, echoing his November 19, 2001, statement, Mr. Meek claimed that Ms. Meek lied about his abusive behavior not only to police but to her family as well, making him a pariah to his in-laws.

During trial, Officer James testified that, in just a few months, Mr. Meek's own characterization of Ms. Meek's desires changed dramatically: in Mr. Meek's statement to Officer James on November 19, 2001, "she wanted what was hers, she wanted what was his, she wanted sole custody," and then "some two months later she wanted nothing." *Id.* at 275. In other words, according to Mr. Meek's statements to police—the first, in November 2001 and the second, in February 2002—supposedly, Ms. Meek had completely reversed her position on child custody and marital property.

2. Mr. Meek's February 28th Statement to Agent Fielding

In his February 28th interview with Agent Fielding, in addition to describing his version of the events of February 20th, Mr. Meek offered his account of his last interactions with Ms. Meek. According to Agent Fielding, Mr. Meek said he returned to work after he and Ms. Meek argued in Valliant Park, and he did not return home until

7:00 a.m. on February 21st. Upon returning home, he saw that Ms. Meek was asleep "in [their son's] bed." *Id.*, Vol. 7, at 551 (Test. of Agent Fielding) (Trial Tr., Vol. 3). Mr. Meek claimed that Ms. Meek then directed him to get Jamie "ready for school," which he did. *Id.* Ms. Meek then "sent [Jamie] to school." *Id.* Mr. Meek described her demeanor when she returned as "mad" and said that she "threatened to leave and go where [he] couldn't find her." *Id.* Mr. Meek then told Agent Fielding that he did not know why Ms. Meek was upset, even though, by his own admission, Ms. Meek had accused him of having an affair just the day before.

Continuing his description of the morning, Mr. Meek said he took the other two kids to daycare, cashed a check for $1,000, and "took the money out of the bank because he had planned on taking the kids camping later that day." *Id.* at 551–52. He then drove to Wal-Mart, where he purchased large plastic containers and other camping supplies. When he returned home, Mr. Meek claimed that Ms. Meek "was at the house," *id.* at 552, and that he "left $500 in cash on the kitchen counter next to [Ms. Meek's] cell phone and her truck keys," *id.* at 553, and then he napped on the couch. Mr. Meek said that at about 3:30 p.m., he "reported off of work," loaded the camping equipment into his truck, and picked up the children from daycare. *Id.* He "never talked to [Ms. Meek] before he left to go camping." *Id.*

In describing the camping trip, Mr. Meek said that he found a "camping spot near Hochatown Cemetery on a dirt road." *Id.* He then said that "the *kids* camped for about an hour." *Id.* (emphasis added). It was too cold, so Mr. Meek drove the family to Broken

Bow, where they bought snacks, and then to Paris, Texas, where he purchased a lottery ticket. When he eventually arrived home, he saw that the $500 was gone.

Mr. Meek also told Agent Fielding that Ms. Meek was "shacked up with" "a boyfriend" who "was a crack dealer" and had "already also threatened to kill herself." *Id.* at 555. He additionally alleged that Ms. Meek "broke his nose" and floated the idea that a different crack dealer had killed her. *Id.*

During his testimony at trial, Agent Fielding had the following exchange with the prosecutor:

> Q: Is that about the gist of what—that's it; right? That's all the statement that he gave you?
>
> A: Yes, sir.
>
> Q: And at some point[,] what stopped the interview I guess? At some point was it just over or what happened?
>
> A: Well, I mean at the end of the interview I had confronted [Mr. Meek] that I believed there was more to the story or that he wasn't being truthful or confronted him that *he might be involved in [Ms. Meek's] disappearance. He told me he didn't want to talk to me anymore and requested an attorney*, and that was pretty much my extent of talking to Mr. Meek.

Id. at 555–56 (emphasis added). Mr. Meek's attorney did not object to this exchange.

3. Mr. Meek's January 2003 Guardianship Hearing Testimony

On January 28, 2003, Mr. Meek testified at a guardianship hearing held to determine the custody status of Jamie. In describing the circumstances surrounding Ms. Meek's purported departure, Mr. Meek explained that "she was tired of the fighting and arguing," and "[s]he just left" without telling him "where she was going or who she was

leaving with." *Id.*, Vol. 6, at 290 (Trial Tr., Vol. 2).[7] Mr. Meek repeated his claim that Ms. Meek abused him by "hitting" and "pushing" him, and denied "ever" hitting her. *Id.* at 290–91. He further claimed that Ms. Meek abused him on February 20, 2002, "[t]he day before" she left. *Id.* at 293–94. He alleged that Ms. Meek had taken the keys to Mr. Meek's truck and then "started hitting [him]" after he "got the keys back from her." *Id.* at 293–94. She continued to hit him after he "walked away," at which point he "pushed her back" and "told her that [he] didn't want no more fighting." *Id.* at 294. She responded, he claimed, by kicking him in the stomach.

According to Mr. Meek's testimony, Ms. Meek had threatened to leave before, but she had never previously "left for any extended time or anything." *Id.* at 291. He also testified that "whenever" she raised the prospect of leaving, Ms. Meek would threaten to "tak[e] the kids." *Id.* at 292. He then quickly clarified that "sometimes [Ms. Meek] didn't talk about taking the kids," though he acknowledged "it would depend upon what mood she was in." *Id.* And later, when pressed about the circumstances surrounding Ms. Meek's sudden departure, he testified that she had "threatened to [leave without her kids] many times." *Id.* at 305.

[7] At Mr. Meek's trial, the prosecution read to Mr. Meek the questions posed to him at the 2003 Guardianship Hearing, and Mr. Meek responded by reading the responses he gave during that hearing. *See* Aplt.'s Supp. App., Vol. 6, at 286–87. In quoting Mr. Meek's testimony at the 2003 Guardianship Hearing, we cite to his recitation of that testimony during his trial. Mr. Meek objected to introducing his testimony from the 2003 Guardianship Hearing, but the trial court overruled his objection, *see id.* at 287, and Mr. Meek did not raise any issues concerning his testimony from the 2003 Guardianship Hearing in his habeas petition or in this appeal.

Mr. Meek also provided an account of the last time he saw his wife, on February 21, 2002. After arriving "home from work" around 7:00 a.m., Mr. Meek "[g]ot Jamie ready for school" before lying down to sleep, at which point Ms. Meek "started in arguing with" him. *Id.* at 292. That argument was a continuation of one they had been having "for a while," he said, and Ms. Meek "kept on arguing and kept on arguing," even after Mr. Meek "told her [he] wanted to get some sleep." *Id.* At some point, Mr. Meek "got up and left," but not before Ms. Meek told him "she was leaving" and asked for "some money." *Id.* So, Mr. Meek "went to the bank and got some money," a trip that took "a couple hours or so." *Id.* When he returned to the house, he "got some sleep," and, at some point after that, Ms. Meek "told [him] that she was . . . going to leave and didn't want the kids to see her leave." *Id.* at 292–93. That was "the last time [he had] seen her." *Id.* at 293.

Mr. Meek did not discuss his immediate reaction to Ms. Meek's stated plans for departure. Instead, he explained that he went to the store to purchase "[b]ig Rubbermaid . . . plastic . . . containers" to store camping gear in. *Id.* at 295–96. Then, he picked up the kids from school and "[t]ook them camping," which they had been "wanting to" do "ever since [he] got a tent for Christmas." *Id.* at 293. Mr. Meek took all of the children on this "end of February" camping trip, including his youngest child, who was only "a year old." *Id.* at 296–97. Mr. Meek volunteered that he did not take the kids "fishing" or anything "like that." *Id.* at 298.

After realizing that it was too cold to camp, Mr. Meek packed up camp, left, and drove around Broken Bow, Oklahoma, and Paris, Texas, "just trying to kill some time."

Id. at 297–99. Ms. Meek was gone when they returned. According to Mr. Meek's testimony, "most" of Ms. Meek's personal belongings remained, including her glasses, cell phone, and truck. *Id.* at 300–01. Notably, in addition to testifying before the jury that Ms. Meek always had her cell phone with her, Ms. Meek's mother (Ms. Walker) had testified that Ms. Meek suffered from poor eyesight and could not function well without her glasses or contacts. Yet Mr. Meek—commenting that Ms. Meek "got around"—floated the idea that Ms. Meek's boyfriend picked her up, but he admitted that he could not know for sure. *Id.* at 301–02. He denied having any affairs himself but claimed that Ms. Meek was "insecure" and "always" suspected him of cheating. *Id.* at 302–03.

4. Mr. Meek's October 2013 Trial Testimony

At trial, Mr. Meek testified that he returned home from work on the morning of the 21st between 6:30 and 7:00 a.m. Echoing his prior testimony, Mr. Meek recounted that once he went to bed, Ms. Meek approached him and directed him "to get Jamie up and . . . ready for school." *Id.*, Vol. 9, at 1046. At around 7:50 a.m., Mr. Meek walked Jamie "across the street to school" and returned home to find that Ms. Meek had left. *Id.* at 1047–48.[8] At some point, Ms. Meek returned home and "start[ed] griping and saying she's tired of everything, tired of [Mr. Meek's] shit, tired of getting shit on by everybody" and "said that she's leaving." *Id.* at 1049–50. Mr. Meek "assumed that [Ms. Meek] was talking about taking the kids and leaving," prompting him to tell her that he

[8] Mr. Meek's trial testimony that he took Jamie to school was consistent with his initial statement to Officer James but at odds with his statement to Agent Fielding, in which he claimed that it was Ms. Meek who took Jamie to school.

would "find out where the kids are at" if she left with them. *Id.* at 1051. In his words, Ms. Meek responded that she intended to go "to a place that nobody knows where she is at and start over again." *Id.* at 1051. According to Mr. Meek, she "told [him] that she wanted [him] to take the kids somewhere so that they didn't see her leave." *Id.* at 1050.

He then testified that she asked him "for some money," at which point he woke up the other two children and "t[ook] them to daycare." *Id.* at 1051. Consistent with his earlier statements and testimony, Mr. Meek said that he went to the bank to withdraw $1,000. Evidence showed that Mr. Meek withdrew the $1,000 around 10:30 a.m. Mr. Meek then gave the following testimony: "I go to Wal-Mart because *while I'm at Wal-Mart* was whenever she told me to take the kids somewhere they wouldn't see her leave." *Id.* (emphasis added). While at Wal-Mart, he testified that he bought storage bins for his camping gear, including "the lights, the grill, [and] the little propane bottles" as well as "blankets, [a] sleeping bag, [and] [an] air mattress." *Id.* at 1053–54. A receipt and surveillance footage from Wal-Mart showed that Mr. Meek purchased *only* two 50-gallon storage bins at around 1:00 p.m. that day. Significantly, this fact was specifically pointed out by Agent Fielding during his trial testimony. Mr. Meek testified that, when he returned home, he decided to take a nap and could hear Ms. Meek "walking around upstairs." *Id.* at 1054. He was unsure for how long he napped but noted that he "reported off" from work around 3:20 p.m. and, also around that time, picked up the children from school and daycare to go camping. *Id.* at 1055.

Mr. Meek described stopping at "Beaver's Bend" and "Lake Pine Retreat" en route to the camping spot so that the kids could "feed the ducks." *Id.* at 1056. Consistent

with his prior statements, Mr. Meek soon found that the conditions were not ideal for camping, packed up, and left. By the time he returned home around midnight, Ms. Meek was gone.

5. Ms. Bell's Testimony

After Mr. Meek filed the missing person report, an agent with the OSBI asked Ms. Bell to interview Jamie, then six years old, as part of the investigation into Ms. Meek's disappearance. On February 28, 2002, Ms. Bell went to Jamie's daycare facility and found that the interview did not "require eliciting any type of secret or hidden dramas," *id.*, Vol. 6, at 475 (Test. of Vicki Bell) (Trial Tr., Vol. 2), because Jamie immediately volunteered that she had heard her mom tell friends "that [Mr. Meek] had hit her [] with glass," *id.* at 477.

Jamie also described the last time she saw her mother. According to Ms. Bell, Jamie had last seen her mother "in her parents' bedroom . . . and her parents were fighting." *Id.* at 479. Jamie apparently "asked if she could go downstairs and her mother said she could and she took her brother, and they went downstairs to watch television." *Id.* Jamie said that she could "hear the fight" and at one point heard "the 'F' word." *Id.* at 479–80. When Ms. Bell asked her "what ended the fight," Jamie said that "mommy got quiet." *Id.* at 480. Notably, however, Ms. Bell did not specify when this fight occurred, *see id.* at 479–81, though the State urged in its closing argument that the conflict Jamie overheard occurred on February 21st, *see id.*, Vol. 10, at 1310. For his part, Mr. Meek claimed the fight occurred on February 20th, when Jamie was home from

school. *See* Aplt.'s Supp. App., Vol. 9, at 1087, 1089, 1097 (Test. Of Jerry Meek) (Trial Tr., Vol. 4).

In any case, this was not the first fight Jamie witnessed between her parents. According to Ms. Bell, Jamie described two instances of physical abuse on the part of Mr. Meek, one in which he "kicked" her mother and another in which the police arrived after "her dad had hit her mother." *Id.*, Vol. 6, at 480.

As for the 21st, Ms. Bell testified about Jamie's specific recollections of that day's events. On the 21st, Mr. Meek allegedly instructed Jamie and her brother, then only a toddler, to help him cut out a section of carpet and put it in the trunk of their car.[9] And, consistent with Mr. Meek's own statement to the police, Jamie said that the family "went a lot of places after that," including camping, and along the way dumped the carpet. *Id.* at 481. Jamie also "said they went fishing" and "went to a place where there were houseboats and ducks." *Id.* Moreover, "[s]he said they pitched a tent and she and her siblings sat in the tent for a while and then their dad came back and got them and they left." *Id.* Ms. Bell asked Jamie if she had spoken to her mother since these events, and Jamie confirmed that she had not and that "her father told her that her mother was gone forever."[10] *Id.* at 481–82.

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[9] Mr. Meek testified, however, that he took up some of the carpet and disposed of it on Sunday, February 24—rather than the 21st, the day of the murder. *See* Aplt.'s Supp. App., Vol. 9, at 1071–73, 1089–90.

[10] Jamie offered a similar account to her grandmother, Ms. Walker, during a family visit. According to Ms. Walker, Jamie asked her if she knew where her mother was. Jamie then explained that the last time she saw her mother, her parents were fighting upstairs.

F. The February 22nd Tax Return and the Unclaimed Paycheck

On February 22, 2002, the day after Ms. Meek's disappearance, the Internal Revenue Service ("IRS") deposited $6,219 into Mr. Meek's bank account, based on the filing by the Meeks of a joint tax return. Mr. Meek had previously shared the account with his wife.[11] He had prior notice that the IRS would be depositing the payment that day: on February 11, 2002, his accountant, L. Dean Bond, wrote him a letter that the "deposit . . . is scheduled to be deposited" on the 22nd. *Id.*, Vol. 12, at 19 (State's Ex. 11) (Letter from L. Dean Bond, CPA, dated Feb. 11, 2002).

Three days later, on February 25, 2002, McCurtain County issued Ms. Meek a check in the amount of $66.58 for her work at the county jail. Ms. Meek, however, never retrieved her paycheck.

G. The Events of February 27th and 28th

The jury also heard from Elmer Roberts, who sold carpet to Mr. Meek on or around February 27, 2002, the day after Mr. Meek filed the missing person report in connection with Ms. Meek's disappearance. Mr. Roberts testified that Mr. Meek entered his store on the evening of the 27th to purchase carpet for the upstairs section of his home, which he needed laid "[p]retty quick[ly]." *Id.*, Vol. 7, at 582 (Test. of Elmer Roberts) (Trial Tr., Vol. 3). Mr. Roberts's wife, Betty Roberts, was at the carpet store

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[11] On October 3, 2001, around the same time she separated from Mr. Meek, Ms. Meek removed herself from the bank account. However, when Mr. Meek and Ms. Meek reconciled in early 2002, they requested that their accountant direct the IRS to deposit their joint return into Mr. Meek's account. And the jury also heard evidence that, even if Ms. Meek was no longer on the account, she would nevertheless be entitled to part of that joint return.

and testified that she could tell Mr. Meek "was in a hurry," as "[h]e was pacing up and down . . . saying he needed that carpet laid the next day." *Id.* at 653 (Test. of Betty Roberts) (Trial Tr., Vol. 3). Because Mr. Meek's carpet needs were so pressing, Mr. Roberts went to Mr. Meek's house that night to measure the area to be carpeted; when he arrived, he discovered that a section of the existing carpet had been "cut out." *Id.* at 588. Mr. Roberts "pulled the guys off a job the next day and sent them up" to Mr. Meek's house to install the carpet. *Id.* at 583.

Carpet layer Gary Hamilton reported to Mr. Meek's home around 9:00 a.m. the next day, February 28, 2002. Mr. Hamilton also saw that some of the old "carpet"—"probably nine yards"—"was already taken up." *Id.* at 614 (Test. of Gary Hamilton) (Trial Tr., Vol. 3).

While Mr. Hamilton was installing the new carpet—and after Ms. Bell's interview with Jamie—OSBI agents and police officers arrived at the Meek residence to execute a search warrant. During the search, police uncovered Ms. Meek's cell phone. They also found Ms. Meek's keys in "the broiler portion of the stove." *Id.* at 545–46 (Test. of Agent Fielding). Agent Fielding, who participated in the search, did not find the 50-gallon storage bins that Mr. Meek purchased the day of Ms. Meek's disappearance.[12]

[12] Mr. Meek's witnesses described seeing him use two plastic storage containers—colloquially referred to as "totes"—to clean motor parts by soaking them in fuel. *Id.*, Vol. 8, at 968–69; *see also id.* at 932 (Test. of Tiffany Oney) (Trial Tr., Vol. 40 ("There were car parts that he cleaned that were in totes that were soaking in . . . gas or diesel.").

Agent Fielding did, however, find pieces of carpet that he suspected came from the Meek residence in a landfill in Antlers, Oklahoma.

That carpet made its way to the landfill via a "green box"—i.e., a dumpster—located near Hochatown, that is, near where Mr. Meek took the children camping and where Mr. Meek's parents lived in North Pole, Oklahoma. Agent Chad Dansby, who inherited the Meek case after Agent Fielding moved offices, constructed a diagram showing that Mr. Meek passed several dumpsters—including ones closer to his house—before disposing of the carpet near Hochatown. Agent Dansby also testified that the weather report for February 21, 2002—the day Ms. Meek was last seen, and the day that Mr. Meek took the children camping—indicated that the temperature would be a high of 63 degrees and a low of 43 degrees.

H. The Search for Ms. Meek

Agent Dansby further testified that, with the assistance of extensive databases, OSBI had been monitoring Ms. Meek's identifying information, including her "date of birth, Social Security number," and the like, since "Spring of 2002" and had yet to find her. *Id.*, Vol. 7, at 700–01 (Test. of Agent Dansby) (Trial Tr., Vol. 3). Agent Dansby had also looked for Ms. Meek on social media, where there were numerous pages, groups, and blogs dedicated to finding her, but had nevertheless been unable to locate her. OSBI had also obtained DNA from Ms. Walker and Ms. Meek's dental records, which it submitted to various databases that would alert law enforcement in the event that the testing of unidentified remains yielded a match. Despite these extensive efforts, law enforcement found no trace of Ms. Meek.

I. The Goodbye Note

Two days after the State rested its case in Mr. Meek's trial—held in October 2013—the defense sought to introduce a so-called "Goodbye Note" allegedly authored by Ms. Meek. The note had not been shared during discovery, due to a purported "oversight" that Mr. Meek's counsel explained as follows:

> There was a note that was provided to counsel by defendant in plenty of time and in the course of—this note was in [the] file but in the course of preparing the hundreds[,] if not maybe thousands[,] of documents and taking them to have those sent to a place to be placed on a CD, this note did not make it into the scan file. And it was certainly no fault of the defendant. It was purely the fault of defendant's counsel and we had it in . . . our numbered folders; it just didn't make it to [the copy center]. Somehow it didn't wind up getting scanned in with all of the other documents.
>
> It is a document that we want to use. It is consistent in writing and style and everything else with the four other notes that OSBI took out of the house and provided to counsel. So, it is an important part of Defendant's case that he be able to get this note in because it describes the—it is basically a good[bye] note. And so therefore, it's extremely important[,] and in the course of being scanned it didn't make it in there. When we were . . . doing our housekeeping in preparation for presentation of evidence, we had determined that it was not—it didn't make it on to any disk at all.

Id., Vol. 8, at 975–76.

Defense counsel also explained that Mr. Meek had possessed the note since 2002 but did not discover it until approximately one month after Ms. Meek's disappearance because it was placed in his lunch box. For that reason, Mr. Meek was not aware of the note's existence until *after* he had provided statements to the police.

The State objected, arguing that counsel for Mr. Meek did not raise the note—"a huge piece of evidence"—in his opening statement despite its being "as close to a smoking gun on the other side as you can possibly have." *Id.* at 977. As well, defense counsel did not mention the existence of the note "at any time during the course of any conversation he and [the State's prosecutor] had." *Id.* Citing the absence of a handwriting expert, the State further argued that the untimely disclosure of the note precluded them from "rebut[ting] whether [it] [was] an authentic document." *Id*. Police officers also did not discover the note when searching the Meek residence on February 28, 2002. And, finally, Mr. Meek himself did not discuss the note in describing the circumstances surrounding Ms. Meek's disappearance during the January 2003, Guardianship Hearing—despite having allegedly discovered the note several months prior.

In sustaining the State's objection, the court explained that admission of the note would be "prejudicial to the State." *Id.* at 982. And—citing the police department's failure to find the note during the search of the Meek residence, the defense's failure to mention the note until two days after the State rested, and the lack of a date or signature on the note—the court found it "incredible that a document that the Defense says is extremely important remains secret for eleven plus years until . . . days after the State rests." *Id.* at 982–83. More likely, the court thought, "the delay"—which it did not find to be "accidental"— was "meant to obtain a . . . tactical advantage." *Id.* at 983.

II. PROCEDURAL HISTORY

A. Mr. Meek's Direct Appeal

On direct appeal to the OCCA, Mr. Meek raised six propositions of error: (1) there was insufficient evidence of guilt to convict Mr. Meek of premeditated murder in the first degree; (2) the trial court committed reversible error in refusing to allow Mr. Meek to introduce the Goodbye Note, purportedly written by Ms. Meek; (3) the introduction of hearsay statements purportedly made by Ms. Meek violated the hearsay rule and Mr. Meek's rights under the Confrontation Clause; (4) Agent Fielding's comment on Mr. Meek's invocation of counsel was an evidentiary harpoon that deprived him of a fundamentally fair trial; (5) Mr. Meek received ineffective assistance when his counsel failed (a) to provide the Goodbye Note to the State in pre-trial discovery, (b) to object to much of the hearsay introduced, (c) to object to Agent Fielding's improper comment about the invocation of counsel, and (d) to move for a directed verdict of acquittal; and (6) that the cumulative effect of the errors in this case rendered the trial fundamentally unfair.

In a six-page order dated August 27, 2015, the OCCA affirmed Mr. Meek's conviction in full. Examining the evidence in the light most favorable to the prosecution, the OCCA summarily determined "there was sufficient evidence for any rational trier of fact to find the essential elements of the offense beyond a reasonable doubt." Aplt.'s App. at 5. It also concluded that Mr. Meek waived any objection to the trial court's exclusion of the Goodbye Note due to defense counsel's failure "to make an offer of proof" regarding the note's contents to the trial court. *Id.* To the extent that Mr. Meek

sought to overcome that failure by raising an ineffective-assistance-of-counsel claim, the OCCA rejected his efforts, concluding that "[Mr.] Meek suffered no prejudice" on account of his counsel's failed "attempt to introduce the evidence." *Id.* at 5–6. For that same reason, the OCCA denied Mr. Meek's motion for an evidentiary hearing and for supplementation of the record. *Id.* at 6.

Turning to Mr. Meek's third challenge regarding hearsay statements, the OCCA found that Mr. Meek's counsel failed to object to the challenged hearsay statements, prompting it to review only for plain error. Ultimately, the OCCA concluded that "the statements, in context, were utilized to show [Ms. Meek's] [] state-of-mind and to provide motive for the killing." *Id.* Thus, "no plain error occurred." *Id.* The OCCA similarly found no Confrontation Clause error with respect to the state district court's admission of Jamie's out-of-court statements to Ms. Bell, as Jamie "appeared at trial and was subject to cross-examination." *Id.* at 7. The OCCA also noted counsel's failure to object to the allegedly improper law-enforcement comment concerning the invocation of counsel, but found in any event that Agent Fielding's "answer did not meet the definition of an evidentiary harpoon, nor did the [prosecutor's] question rise to the level of prosecutorial misconduct." *Id.*

In the OCCA's view, none of counsel's failures to object, especially as they related to purported hearsay statements, amounted to ineffective assistance. To the contrary, insofar as the alleged hearsay demonstrated Ms. Meek's tendency "to blame [Mr.] Meek for their troubled marriage and [that she] finally left," the OCCA found counsel's failure was likely a strategic choice. *Id.* at 8. Finally, the OCCA rejected Mr.

Meek's cumulative-error argument, concluding "that there [were] no individual errors requiring relief." *Id.*

Mr. Meek filed a petition for rehearing on September 1, 2015, challenging the OCCA's finding with respect to his fourth proposition of error (i.e., concerning the alleged evidentiary harpoon), which the OCCA denied on September 10, 2015.

B. Mr. Meek's Habeas Petition

On December 9, 2016, Mr. Meek filed a § 2254 application in the United States District Court for the Eastern District of Oklahoma. Mr. Meek's habeas briefing contained three bases for relief: (1) insufficiency of evidence; (2) ineffectiveness of trial counsel under the Sixth Amendment for failing to make the Goodbye Note part of the record, failing to object to hearsay, and failing to object to Agent Fielding's comment; and (3) cumulative error.[13]

The district court considered each of the three issues raised in Mr. Meek's briefing and determined on the merits that Mr. Meek was not entitled to federal habeas relief. It further denied Mr. Meek's requests for a certificate of appealability ("COA") and an evidentiary hearing.

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[13] In the Petition itself, Mr. Meek presented six grounds for relief: (1) the evidence was insufficient to convict; (2) the state court committed reversible error by excluding the Goodbye Note; (3) hearsay testimony violated his right to confrontation and cross-examination; (4) an evidentiary harpoon deprived Mr. Meek of a fair trial; (5) ineffective assistance of counsel; and (6) cumulative error. *Meek v. Martin*, No. 6:16-cv-00543 (E.D. Okla. Dec. 9, 2016), Dkt. 2 ("Habeas Petition"). Mr. Meek, however, did not appear to pursue all of these grounds in his briefing. And the district court effectively deemed only the grounds for relief that were expressly delineated in Mr. Meek's briefing to be properly before it. Mr. Meek does not allege any error related to this decision of the district court, and, therefore, we do not consider this matter further.

Mr. Meek filed a notice of appeal, seeking a COA from this court. We granted a COA on the following claims: (1) whether the State's evidence was sufficient to convict Mr. Meek of first-degree murder; (2) whether Mr. Meek's trial counsel was ineffective in failing (a) to introduce into evidence the Goodbye Note allegedly authored by Ms. Meek, (b) to object to hearsay, and (c) to object to "an evidentiary harpoon"; and (3) whether the cumulative effect of errors deprived Mr. Meek of a fundamentally fair trial. *See Meek v. Martin*, No. 20-7021 (10th Cir. Feb. 8, 2021) ("Order Granting COA").

III. STANDARD OF REVIEW

A. Our Deferential Review of State-Court Decisions Under AEDPA

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") "circumscribes our review of federal habeas claims that were adjudicated on the merits in state-court proceedings." *Hooks v. Workman* ("*Victor Hooks II*"), 689 F.3d 1148, 1163 (10th Cir. 2012); *see Ryder ex rel. Ryder v. Warrior*, 810 F.3d 724, 738 (10th Cir. 2016) ("Our review of [habeas claims] is circumscribed by AEDPA . . . ."). AEDPA limits federal habeas relief to only circumstances where petitioners can establish that the state court's adjudication of their claims (1) "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law," or (2) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1), (2); *see Littlejohn I*, 704 F.3d at 824 (noting AEDPA's requirements). These restrictions on relief spring from Congress's recognition of "a foundational principle of our federal system: State courts are adequate forums for the vindication of federal rights." *Burt v. Titlow*,

571 U.S. 12, 19 (2013). And because state courts are "presumptively competent . . . to adjudicate claims arising under" federal law, *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990), deference and reasonableness are our watchwords as we review their rulings, *see Simpson v. Carpenter*, 912 F.3d 542, 562 (10th Cir. 2018) (noting that "AEDPA requires that we apply a 'difficult to meet and highly deferential standard' in federal habeas proceedings" (quoting *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011))); *see also Lindh v. Murphy*, 521 U.S. 320, 333 n.7 (1997) (noting that § 2254(d) imposes a "highly deferential standard for evaluating state-court rulings"); *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam) (noting that § 2254(d) "demands that state-court decisions be given the benefit of the doubt").

Indeed, for the purposes of obtaining habeas relief, it is insufficient to show that "the state court's decision was 'merely wrong' or 'even clear error.'" *Shinn v. Kayer*, --- U.S. ----, 141 S. Ct. 517, 523 (2020) (per curiam) (quoting *Virginia v. LeBlanc*, 582 U.S. 91, 94 (2017) (per curiam)). The prisoner must show that a state court's decision is "so obviously wrong" that no reasonable judge could arrive at the same conclusion given the facts of the prisoner's case. *Id.* Stated otherwise, "[a] state court's determination that a claim lacks merit *precludes* federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Richter*, 562 U.S. at 101 (emphasis added) (quoting *Yarborough v. Alvarado,* 541 U.S. 652, 664 (2004)); *see also Frost v. Pryor*, 749 F.3d 1212, 1223 (10th Cir. 2014) (noting that because "AEDPA stops just 'short of imposing a complete bar on federal court relitigation of claims already rejected in state proceedings,'" "[w]e will not lightly conclude that a State's criminal

justice system has experienced the 'extreme malfunction' for which federal habeas relief is the remedy" (first quoting *Richter*, 562 U.S. at 102; and then quoting *Titlow*, 571 U.S. at 20)).

Moreover, when sitting in habeas, the object of a federal court's focus is the state *court's* ultimate *decision*, not the precise contours of the State's argument. *See* 28 U.S.C. § 2254(d) (providing that "[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the *judgment* of a State *court* shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the *adjudication* of the claim" satisfies certain criteria (emphases added)); *see also Brown v. Davenport*, --- U.S. ----, 142 S. Ct. 1510, 1519 (2022) (noting that a habeas petition "must show that [the state court's] *decision* was (1) 'contrary to' or an 'unreasonable application of' clearly established federal law, as determined by the decisions of [the Supreme] Court, or (2) based on an 'unreasonable determination of the facts' presented in the state-court proceeding" (quoting 28 U.S.C. § 2254(d)(1)–(2)) (emphasis added)); *Shinn*, 141 S. Ct. at 524 ("We focus on the state court's . . . determination.").

Notably, "[t]he [habeas] petitioner carries the burden of proof" in satisfying AEDPA's demanding standards, *Pinholster*, 563 U.S. at 181, and, to that end, "must . . . show[] there was *no* reasonable basis for the state court to deny relief," *Richter*, 562 U.S. at 98 (emphasis added). Consequently, in certain instances, as here, where "the state court offered its conclusion . . . without articulating its reasoning supporting that conclusion, *we* 'must determine which arguments or theories . . . could have supported the state court's' determination." *Shinn*, 141 S. Ct. at 524 (quoting *Richter*, 562 U.S.

at 102) (emphasis added)—irrespective of whether those precise arguments or theories are advanced in the first instance by the State.[14]

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[14] In particular, in reviewing Mr. Meek's habeas claims regarding the sufficiency of the evidence and counsel's alleged ineffective assistance pertaining to counsel's failure to timely and properly proffer for admission into evidence the Goodbye Note, we have expressly considered record evidence not discussed by the State. We have done so in furthering our responsibility—rooted in notions of comity—to determine whether Mr. Meek has carried his burden to show that the OCCA unreasonably applied clearly established federal law. *See Pinholster*, 563 U.S. at 181 (noting that "[t]he [habeas] petitioner carries the burden of proof" in satisfying AEDPA's demanding standards); *cf. Wood v. Milyard*, 566 U.S. 463, 471 (2012) ("The exhaustion doctrine, we noted, is founded on concerns broader than those of the parties; in particular, the doctrine fosters respectful, harmonious relations between the state and federal judiciaries. With that comity interest in mind, we held that federal appellate courts have discretion, in 'exceptional cases,' to consider a nonexhaustion argument 'inadverten[tly]' overlooked by the State in the District Court." (quoting *Granberry v. Greer*, 481 U.S. 129, 133–35 (1987) (alteration in original) (citation omitted)).

Though our analysis of these challenges of Mr. Meek extends, in some places, beyond where the State's arguments have gone, we pause to underscore that our analysis does not abandon the party presentation principle—which constrains our role to that of "neutral arbiter" who relies "on the parties to frame the issues for decision." *United States v. Sineneng-Smith*, --- U.S. ----, 140 S.Ct. 1575, 1579 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). Undergirding the party presentation principle is the premise that the parties "know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in judgment).

Here, the State has expressly argued, with respect to Mr. Meek's sufficiency-of-the-evidence challenge, that "[a] reasonable jury could easily conclude from" the "significant unfavorable evidence in the record" that "[Mr.] Meek repeatedly was violent towards [Ms. Meek], was afraid he would lose the kids or significant money in any divorce, and that he solved that problem by killing her shortly after she" returned to the marital residence. Aplee's Resp. Br. at 17–18. Similarly, in response to Mr. Meek's ineffective-assistance claim as it relates to counsel's failure to timely and properly proffer for admission the Goodbye Note, the State expressly contends that "[t]he OCCA was . . . correct that no prejudice resulted [from counsel's failure] because th[e] record does not establish that th[e] dubious note would have changed the outcome of trial." *Id.* at 36. Our own analysis hews quite closely to the thrust of the State's arguments; it departs from them only insofar as it highlights supportive record evidence that the State

neglected to discuss or focus on. In other words, even with our argumentative extensions, the case has more than "a fair resemblance to the case shaped by the parties." *Sineneng-Smith*, 140 S. Ct. at 1582.

In this regard, it bears underscoring that the party presentation principle "is supple, not ironclad"; as such, "a court is not hidebound by the precise arguments of counsel." *Id.* at 1579, 1581. Indeed, the Supreme court has recognized that "[t]here are no doubt circumstances in which a modest initiating role for a court is appropriate." *Id.* at 1579. And the Court illustrated one such circumstance in *Wood*: there, animated by "[t]he institutional interests served by AEDPA"—"comity," chief among them—the Court held that courts of appeals possess the authority "on their own initiative" to consider affirmative defenses that the State had *forfeited*, which notably had the potential of shielding the State from liability. 566 U.S. at 471, 473.

Like *Wood*, comity interests are at play here. However, our initiating role is far more modest than in *Wood*. We do not act in the face of a state forfeiture of a legal theory. And, perforce, it cannot credibly be asserted that we have disregarded a state's "deliberate decision" to forgo—that is, waive—the sort of arguments that we make here. *Id.* at 473. Instead, in keeping with our mandate to both "independent[ly] review . . . the record" upon which the OCCA based its summary denial of Mr. Meek's direct appeal, *Aycox*, 196 F.3d at 1178, and to "determine what arguments or theories . . . could have supported" the OCCA's summary determination that the evidence was sufficient to sustain Mr. Meek's conviction, *Shinn*, 141 S. Ct. at 524 (quoting *Richter*, 562 U.S. at 102), we simply have expressly considered the import of record evidence that the State seems to have overlooked—evidence that supports the State's fully preserved arguments: *viz.*, its arguments that a rational trier of fact could convict Mr. Meek of first-degree murder and that Mr. Meek was not prejudiced by counsel's failure to timely and properly proffer for admission the dubious Goodbye Note. *Cf. Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130 (10th Cir. 2011) (explaining that our "preference" for upholding lower-court decisions takes precedence over traditional party-presentation principles and that, as such, "we may affirm on any basis supported by the record, even if it requires ruling on arguments not reached by the district court or even presented to us on appeal").

Mr. Meek cannot reasonably claim that he has not had "a fair opportunity to present his position" regarding these arguments. *Wood*, 566 U.S. at 472. And, at bottom, it is the evidence, itself, that is "ultimately dispositive of" his challenges highlighted here, and as such, we see no reason that we should not be able to consider the full record properly before us simply because the State overlooked pieces of evidence in that record that support its fully preserved legal arguments. *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 447 (1993) (quoting *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77 (1990)).

1. Standard of Review as to State Court Legal Determinations

In applying § 2254(d)(1)'s legal inquiry "we ask at the threshold 'whether there exists clearly established federal law, an inquiry that focuses exclusively on holdings of the Supreme Court.'" *Littlejohn I*, 704 F.3d at 825 (quoting *Victor Hooks II*, 689 F.3d at 1163). We construe those holdings "narrowly," and will "not 'extract clearly established law from the general legal principles developed in factually distinct contexts.'" *Fairchild v. Trammell* ("*Fairchild I*"), 784 F.3d 702, 710 (10th Cir. 2015) (first quoting *House v. Hatch*, 527 F.3d 1010, 1015 (10th Cir. 2008); and then quoting *id.* at 1017 n.5). The presence of clearly established law, i.e., "on-point holdings," *see id.* (quoting *House*, 527 F.3d at 1015), is a necessary condition to habeas relief; its "absence . . . is dispositive," and closes the door on a petitioner's claim. *House*, 527 F.3d at 1018.

If clearly established federal law exists, a state-court decision is contrary to it only if the court "applies a rule different from the governing law set forth in [Supreme Court] cases, or if it decides a case differently than [the Supreme Court has] done on a set of materially indistinguishable facts." *Bell v. Cone*, 535 U.S. 685, 694 (2002). "A state court need not cite, or even be aware of, applicable Supreme Court decisions, 'so long as neither the reasoning *nor the result* of the state-court decision contradicts them.'" *Simpson*, 912 F.3d at 563 (emphasis added) (quoting *Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam)). We also review the state-court decision for an "unreasonable application" of Supreme Court law, i.e., where the decision "correctly identifie[d] the governing legal rule but applie[d] it unreasonably to the facts of a particular prisoner's case." *Williams v. Taylor*, 529 U.S. 362, 407–08 (2000); *see Richter*, 562 U.S. at 101

("The pivotal question is whether the state court's application of the *Strickland* standard was unreasonable."). Notably, "[f]or purposes of § 2254(d)(1), 'an unreasonable application of federal law is different from an incorrect application of federal law.'" *Richter*, 562 U.S. at 101 (quoting *Williams*, 529 U.S. at 410).

2. Standard of Review as to the State Court's Factual Determinations

We also defer to the state court's factual findings unless "the state court[] plainly misapprehend[ed] or misstate[d] the record in making [its] findings, and the misapprehension goes to a material factual issue that is central to [the] petitioner's claim." *Ryder*, 810 F.3d at 739 (quoting *Byrd v. Workman*, 645 F.3d 1159, 1171–72 (10th Cir. 2011)). The burden of showing that the state court's factual findings are objectively unreasonable falls squarely on the petitioner's shoulders. *See Smith v. Aldridge*, 904 F.3d 874, 880 (10th Cir. 2018). Though the deferential § 2254(d)(2) standard "does not apply to issues not decided on the merits by the state court," *Bland v. Sirmons*, 459 F.3d 999, 1010 (10th Cir. 2006), "[a]ny state-court findings of fact that bear upon the claim are entitled to a presumption of correctness rebuttable only by clear and convincing evidence," *Simpson*, 912 F.3d at 563 (quoting *Grant v. Royal*, 886 F.3d 874, 889 (10th Cir. 2018)); *see Fontenot v. Crow*, 4 F.4th 982, 1061 (10th Cir. 2021) (noting that "[e]ven when reviewing a habeas claim de novo rather than under § 2254(d), state-court factfinding still receives the benefit of doubt under § 2254(e)(1)," meaning that such findings are accorded the statutory presumption of correctness), *cert. denied*, 142 S. Ct. 2777 (2022). "The presumption of correctness also applies to factual findings made by a state court of review based on the trial record." *Sumpter v. Kansas*, 61 F.4th

729, 734 (10th Cir. 2023) (quoting *Al-Yousif v. Trani*, 779 F.3d 1173, 1181 (10th Cir. 2015)).

IV. DISCUSSION

Mr. Meek raises three issues on appeal. First, he contends that the OCCA's determination that the State's evidence was sufficient to convict him was an unreasonable application of federal law that the Supreme Court clearly established in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Specifically, he argues that, given the purely circumstantial evidence against him, the State failed to prove each element of first-degree murder beyond a reasonable doubt. Second, he argues that the OCCA unreasonably denied his ineffective-assistance claims under *Strickland v. Washington*, 466 U.S. 668 (1984). In particular, he claims that three actions by counsel entitled him to relief: (1) the failure to comply with discovery rules with respect to the Goodbye Note, as well as counsel's failure to make the note part of the record; (2) the failure to object to certain hearsay evidence; and (3) the failure to object to an allegedly improper comment regarding Mr. Meek's request for counsel during an interrogation. Finally, he urges that the cumulative effect of all of the identified errors deprived him of a fair trial. We find each of his claims unavailing.

A. Sufficiency of the Evidence

Mr. Meek first argues that the evidence presented at trial was insufficient to convict him of premeditated murder in the first degree. The "beyond a reasonable doubt" standard is—as it should be—an extremely high bar, and this case was decided on purely circumstantial evidence without any of the traditional features of a murder conviction—

e.g., body, weapon, physical evidence, eyewitnesses, or confessions. But, as we explain below, we are compelled under *Jackson* to take a highly deferential approach to the jury's verdict. And, on top of that, we must then view the OCCA's assessment of the jury's verdict through AEDPA's deferential prism. *See, e.g.*, *Coleman v. Johnson*, 566 U.S. 650, 651 (2012) (per curiam) ("*Jackson* claims face a high bar in federal habeas proceedings because they are subject to two layers of judicial deference."). As a consequence, we ultimately conclude that the OCCA's decision is not unreasonable under § 2254(d)(1) and deny Mr. Meek relief on this claim.

1. Legal Standard

Mr. Meek correctly identifies *Jackson* as the clearly established law governing his sufficiency-of-the-evidence claim. Under *Jackson*, the evidence is sufficient when a court determines, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 319. As part of the sufficiency-of-the-evidence inquiry, "we look at both direct *and* circumstantial evidence." *Lucero v. Kerby*, 133 F.3d 1299, 1312 (10th Cir. 1998) (emphasis added). As the Supreme Court elaborated, this standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in . . . testimony, to weigh evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. Where the record might support "conflicting inferences," we presume "that the trier of fact"—here, a jury—"resolved any such conflicts in favor of the prosecution." *Id.* at 326; *see also Messer v. Roberts*,

74 F.3d 1009, 1013 (10th Cir. 1998) ("The Court may not weigh conflicting evidence nor consider the credibility of witnesses.").

Thus, though "the evidence supporting the conviction must be substantial"—in that it "must do more than raise a mere suspicion of guilt," *Beachum v. Tansy*, 903 F.2d 1321, 1332 (10th Cir. 1990)—the *Jackson* inquiry focuses less on whether the jury's determination of guilt was "correct" than on whether it was "rational," *Herrera v. Collins*, 506 U.S. 390, 402 (1993); *see also Messer*, 74 F.3d at 1013 ("[T]he Court must 'accept the jury's resolution of the evidence as long as it is within the bounds of reason.'" (quoting *Grubbs v. Hanningan*, 982 F.2d 1483, 1487 (10th Cir. 1993))). Moreover, importantly, "a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was 'objectively unreasonable.'" *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam) (quoting *Renico v. Lett,* 559 U.S. 766, 773 (2010)); *see Johnson*, 566 U.S. at 651.

The State of Oklahoma charged Mr. Meek with first-degree murder, pursuant to Okla. Stat. tit. 21, § 701.7(A), alleging specifically that:

> [O]n or about the 21st day of February, 2002, in McCurtain County, Oklahoma, by unlawfully and with malice aforethought causing the death of another human being, to-wit: Hope Meek by inflicting certain mortal wounds, to-wit: by unknown means and Hope Meek did in fact die as a result of the wounds inflicted by Jerry Dale Meek, contrary to the form of the statutes made and provided, and against the peace and dignity of the State of Oklahoma.

Aplt.'s Supp. App., Vol. 13, at 13. Our starting point, therefore, is the state law defining the substantive elements of this crime. *See Jackson*, 443 U.S. at 309.

There is no dispute that the prosecution was required to prove the following elements of murder in the first degree under Oklahoma law: (1) the death of a human; (2) the death was unlawful; (3) the death was caused by the defendant; and (4) the death was caused with malice aforethought. So, with an "additional degree of deference" in mind, *Simpson*, 912 F.3d at 592, we turn to examining whether the OCCA's conclusion that the evidence sustained Mr. Meek's first-degree murder conviction constituted an unreasonable application of the *Jackson* standard.

2. Analysis

The OCCA denied relief on Mr. Meek's claim, citing the relevant standard and then concluding summarily that "[i]n a light most favorable to the State, we find that any rational trier of fact could have found the essential elements of first-degree malice murder beyond a reasonable doubt." Aplt.'s App. at 5. Viewed through the doubly deferential prism of *Jackson* and AEDPA, we conclude that Mr. Meek has not carried his burden to show that the OCCA acted unreasonably in reaching this determination. In other words, notwithstanding the purely circumstantial nature of the case against Mr. Meek, the OCCA's decision that the evidence was sufficient to convict him is reasonable and adequately supported by the record.

a. The Death of a Human

We first conclude that the OCCA did not unreasonably apply the *Jackson* standard as it relates to the charge's first element, i.e., that a death, in fact, occurred. Mr. Meek

argues that the State's failure to produce a body or forensic evidence of death, let alone a confession or an eyewitness, means that it failed to prove that Ms. Meek even died. We disagree. When considered in the light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that Ms. Meek died—or, at the very least, the OCCA was not unreasonable in concluding that a rational jury could arrive at that finding beyond a reasonable doubt.

In Oklahoma, evidence of a body is unnecessary to prove death. *See Arnold v. State*, 803 P.2d 1145, 1148 (Okla. Crim. App. 1990) ("[A] body need not be found in order for the crime of murder to be proven."). In the absence of a body, the State may present circumstantial evidence to prove that a victim is dead. *Id.*; *see Rawlings v. State*, 740 P.2d 153, 160 (Okla. Crim. App. 1987) (noting that the element of death in a first-degree murder case may "be proved . . . by circumstantial evidence").

Ms. Meek abruptly disappeared on February 21, 2002, and was never seen or heard from again, including by her mother, with whom she spoke daily. Mr. Meek's statement to Officer James confirmed that Ms. Meek did not take her personal effects with her, including her purse or her cell phone—which some witnesses never saw her without—as well as her pickup truck, which she was proud to own. Nor did she retrieve her final paycheck from the county jail, where she worked. Ms. Meek also left behind her glasses, which her mother testified she could not function well without.

When resolved in the light most favorable to the prosecution, the evidence further showed that Ms. Meek was a devoted mother who loved—and never would have left—her children. Nevertheless, she disappeared shortly before her two daughters' March

birthdays and never contacted her children after her disappearance. Furthermore, despite extensive and long-lasting search efforts, Ms. Meek's location was never discovered. Specifically, the jury heard that law enforcement had been continually searching for Ms. Meek and monitoring her social security number since Spring 2002, but to no avail. Nor had law enforcement seen any evidence that Ms. Meek was active on social media, even though friends and family created numerous blogs and profiles dedicated to finding her.

Accordingly, the OCCA did not unreasonably apply *Jackson*, in our view, when it concluded that this evidence—taken together—could lead a *rational* trier of fact to conclude beyond a reasonable doubt that Ms. Meek is dead.

b. The Evidence Sufficiently Supported a Finding that Mr. Meek Unlawfully Caused Ms. Meek's Death

Regarding the next two elements, Mr. Meek argues that, even assuming Ms. Meek is dead, the State did not prove that he caused her death. Ms. Meek could have, he suggests, died "in some completely common manner, such [as] a car accident in another part of the country—or a foreign country, or simply . . . [by] natural causes." Aplt.'s Opening Br. at 30–31. Even if he caused her death, Mr. Meek contends that the State failed to prove that the cause was unlawful, as he could have killed her in self-defense. Once more, we conclude that Mr. Meek failed to show that the OCCA unreasonably applied *Jackson* in upholding the jury's verdict regarding these elements.

Circumstantial evidence may be used to prove causation. *See Rawlings*, 740 P.2d at 160 (noting that the State could use circumstantial evidence in a first-degree murder case to prove that the victim "died from the effects of a wound" and "that the wound was unlawfully inflicted by the defendant"); *cf. Rutan v. State*, 202 P.3d 839, 850 (Okla.

Crim. App. 2009) ("[E]vidence of the history of verbal and physical abuse inflicted upon the victim by [the defendant] supports a finding that [the defendant] used unreasonable force on [the victim] which resulted in his death."); *Cuesta-Rodriguez v. State*, 241 P.3d 214, 226 (Okla. Crim. App. 2010) ("Evidence of previous altercations between spouses is relevant to the issue of intent."). Notably, the Supreme Court has "never questioned the sufficiency of circumstantial evidence in support of a criminal conviction, even though proof beyond a reasonable doubt is required." *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003).

The jury heard in great detail that Ms. and Mr. Meek had an unhappy, volatile, and violent relationship. More specifically, notwithstanding Mr. Meek's claim that he did not physically abuse his wife, the jury heard contrary evidence, including the following: Jamie's prior statements recounting an incident in which her father kicked her mother, testimony from multiple witnesses who said they saw bruising and marks on Ms. Meek the day before her disappearance, and testimony from others who described how Ms. Meek would "g[e]t real nervous and fidgety" around Mr. Meek, Aplt.'s Supp. App., Vol. 6, at 314–15, and that Ms. Meek's "whole demeanor" changed after she separated from Mr. Meek for the second time, going from "timid" to "talkative," *id*. at 359–60.

Adding greater color to the State's portrait of a marriage broken by violence, the jury heard that Ms. Meek feared Mr. Meek. For instance, Ms. Howell testified that Ms. Meek described fearing for her life after Mr. Meek choked her. Furthermore, also corroborating Mr. Meek's willingness to resort to violence, Ms. Howell testified that Mr. Meek even threatened her after she disclosed to Ms. Meek that Mr. Meek was having an

affair. A jury could also rationally infer that Ms. Meek's purported desire to take self-defense classes for women who had been through domestic violence stemmed from her fear of Mr. Meek. Ms. Meek's allegations—through three witnesses—that Mr. Meek assaulted her following her efforts to confront him about his affair further evidenced her fearful, distressed state of mind in the runup to her disappearance.

And Mr. Meek's own statements to police supported the inference that Ms. Meek feared him: according to both the written statement that Mr. Meek gave Officer James and the oral statement that he gave to Agent Fielding, Ms. Meek told him the day of her disappearance that she was leaving for somewhere he could not "find" her. *Id.*, Vol. 12, at 12 (State's Ex. 5); *id.*, Vol. 7, at 551. A reasonable jury could have questioned why—if Mr. Meek actually was the gentle, family man that neither abused nor controlled his wife—Ms. Meek would harbor such concern that Mr. Meek (in his own words) might "find" her. And we think that the OCCA would not have been unreasonable in concluding that a rational jury could have viewed this as one more piece of evidence that Ms. Meek feared her husband—and with good reason.

In addition to Ms. Meek's state-of-mind statements that evinced her volatile marriage with Mr. Meek, the OCCA would not have been unreasonable in concluding that a rational jury could have found that Mr. Meek's self-described actions around the time of Ms. Meek's disappearance supported the inference that he unlawfully caused Ms. Meek's death. It is undisputed that the day of Ms. Meek's disappearance, Mr. Meek purchased two 50-gallon storage bins at Wal-Mart, and nothing else. Considering the totality of the evidence, the jury could have rationally inferred that Mr. Meek used those

bins to store Ms. Meek's petite body, which would in turn have supported the inference that he unlawfully caused her death. Or, at least, the OCCA reasonably could have concluded that the jury could rationally make this inference.

The jury also heard prior statements from Jamie describing her father's seemingly bizarre recruitment of the children to help him cut up the carpet and carry it to the truck, and his subsequent statement to her that Ms. Meek was "gone forever." *Id.*, Vol. 6, at 481–82. Later that same day, according to Mr. Meek's trial testimony, Mr. Meek stopped at Beaver's Bend and Lake Pine Retreat—two bodies of water—so that the kids could "feed the ducks" before going on his ill-conceived, February camping trip and along the way disposing of the carpet he removed from an upstairs bedroom. Aplt.'s Supp. App., Vol. 9, at 1056–58; *id.*, Vol. 7, at 631.

In addition to the seemingly strange circumstances surrounding the camping trip, Jamie's statements to Ms. Bell and the subsequent police search of the Meek residence, further supported a rational inference that Mr. Meek's camping trip had an ulterior purpose. According to Ms. Bell, Jamie told her that the family went fishing—which Mr. Meek, unprompted, denied took place, during the 2003 Guardianship Hearing—and that Mr. Meek left the children unattended in the tent "for a while," only for Mr. Meek to collect them and leave the camping spot when he came back. *Id.*, Vol. 6, at 480–81. Mr. Meek's statement to Agent Fielding—i.e., that "the *kids* camped for about an hour"—likewise lent support to the rational inference that Mr. Meek left his children unattended in the tent for some time to effectuate a nefarious plan. *Id.* at 553 (emphasis added). Specifically, a rational jury could have concluded that Mr. Meek left the children alone to

dispose of Ms. Meek's corpse—be it in a body of water along the route of travel or otherwise—and that her body was contained in the storage bins. This conclusion, in turn, supported the inference that Mr. Meek unlawfully caused Ms. Meek's death. After all, if Ms. Meek died in some way unrelated to Mr. Meek's unlawful actions, it is doubtful that he would go to such great lengths to dispose of her corpse. At the very least, the OCCA would not have been unreasonable in concluding that a rational jury could make this inference.[15] In this regard, though police searched Mr. Meek's residence, they never found the storage bins.

Moreover, on top of all of this, Mr. Meek's frantic interactions with Mr. Roberts, the carpet salesman, on February 27, 2002—the day after he filed the missing person report—and his urgent request that the carpet be laid the next day, as well as his earlier

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[15] Notably, the State did not advance this line of reasoning before us in support of Mr. Meek's conviction—either in its briefing or at oral argument—but we nevertheless believe that AEDPA's deferential standards, including its allocation of the burden of proof to Mr. Meek (as petitioner), permit us to assess whether certain theories could reasonably support the state court's judgment. As we have noted *supra* (*see* note 14), where, as here, "the state court offered its conclusion . . . without articulating its reasoning to support that conclusion, *we* 'must determine which arguments or theories . . . could have supported the state court's' determination." *Shinn*, 141 S. Ct. at 524 (quoting *Richter*, 562 U.S. at 102) (emphasis added). In keeping with that obligation—and considering "the evidence in the light most favorable to the prosecution"—we believe that the OCCA would not have been unreasonable in determining that the evidence that Mr. Meek left his children unattended at night in a tent—under the strange circumstances of his purported camping trip, involving visits to two different bodies of water—lends itself to a "rational trier of fact . . . f[inding] [some of] the essential elements of the crime beyond a reasonable doubt," *Jackson*, 443 U.S. at 319. That is, the OCCA would not have been unreasonable in determining that a rational jury could find based on these circumstances that Mr. Meek unlawfully caused Ms. Meek's death.

efforts to dispose of the carpet he had previously removed from the upstairs bedroom in a trash receptacle in Hochatown, far outside of Valliant, provided further foundation for the inference that Mr. Meek unlawfully caused Ms. Meek's death.

In sum, viewing the evidence in the light most favorable to the prosecution, the OCCA did not unreasonably apply the *Jackson* standard in concluding that a rational jury could find Mr. Meek guilty beyond a reasonable doubt as to these elements.

c. Malice Aforethought

Finally, Mr. Meek urges that even if he killed Ms. Meek, the State failed to introduce evidence proving that he did so with the premeditation necessary to sustain a first-degree murder conviction. More specifically, Mr. Meek contends that "even if we were to assume that [Ms. Meek] confronted [him] about an affair, and that they had a domestic dispute about it, and even that [he] took some action that caused her death, the evidence . . . indicates a lesser form of homicide." Aplt.'s Opening Br. at 31. We conclude that the OCCA did not unreasonably apply the *Jackson* sufficiency-of-the-evidence standard in sustaining Mr. Meek's conviction, as to this element.

Malice is defined as "that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof." 21 Okla. Stat. Ann. tit. 21, § 701.7(A). Importantly, "[p]remeditation sufficient to constitute murder may be formed in an instant or it may be formed instantaneously as the killing is being committed." *Tryon v. State*, 423 P.3d 617, 636 (Okla. Crim. App. 2018). Thus, there is no requirement that the murder be "pre-planned" within the colloquial meaning

of the word.[16] Equally critical, circumstantial evidence can be used to prove malice aforethought. *See Davis v. State*, 268 P.3d 86, 111 (Okla. Crim. App. 2011) ("Malice aforethought may be proved by circumstantial evidence."); *Arnold*, 803 P.2d at 1148 ("We begin with the understanding that intent, like all states of mind, almost always will be proved, if at all, by circumstantial evidence."); *accord Jackson*, 443 U.S. at 324–25 (concluding that "[f]rom the circumstantial evidence in the record, . . . the trial judge could reasonably have found beyond a reasonable doubt that the petitioner did possess the necessary intent at or before the time of killing").

Mindful that we must give state courts the "benefit of the doubt" in reviewing their adjudication of issues, *Woodford*, 537 U.S. at 24, we cannot say that the OCCA unreasonably applied the *Jackson* standard in concluding that a rational jury could find that the evidence supported the element of premeditation beyond a reasonable doubt. In fact, much of the evidence supporting the jury's premeditation finding came directly from Mr. Meek—especially as it related to his motive and the timeline for Ms. Meek's murder.

In Mr. Meek's own words, the children were his "weak link," Aplt.'s Supp. App., Vol. 6, at 273, and Ms. Meek had threatened multiple times to either leave with, or seek sole custody of, the kids—often to "get at" or financially exploit him, *id.*, Vol. 9, at 1028. She also, according to Mr. Meek, took steps to make good on her alleged promise "to ruin [his] life," to "get [him] fired from work," *id*., Vol. 6, at 272, and to leave with his

[16] Accordingly, Mr. Meek's argument that "the evidence—at most—indicates a lesser form of homicide—not pre-planned murder," Aplt.'s Opening Br. at 31, evinces a misunderstanding of the premeditation requirement under Oklahoma law.

children (and money) by fabricating domestic violence allegations against him—leaving Mr. Meek with "no doubt" that a court would have awarded Ms. Meek custody of their son had he attempted to divorce her, *id.*, Vol. 9, at 1003–04. And, even if the pair had divorced and he retained some custody rights to his *biological* children, Mr. Meek knew that he had "no toe hold," that is, parental rights, to Ms. Meek's eldest daughter, Jamie, whom he helped raise "since she was two years old." *Id.* at 1028. So, Mr. Meek was, as he put it, "between a rock and a hard place" when it came to his marriage with Ms. Meek. *Id.* at 1127.

Adding to Mr. Meek's troubles, Ms. Meek tried to move Mr. Meek's shift at Weyerhaeuser, which brought the couple's marital problems to his place of employment, resulting in a conversation between Mr. Meek and his supervisor. Mr. Meek already felt like he "couldn't never give [Ms. Meek] enough money to keep her happy," without having to deal with these additional professional pressures. *Id.* at 1020. And eleven days before her disappearance, Mr. Meek's accountant informed him that the IRS would be depositing money stemming from the Meeks' joint tax return into his bank account on February 22, 2002—the day *after* Ms. Meek disappeared—which would have entitled Ms. Meek to additional sums, which she necessarily could not claim, if she was dead on February 22nd. And, of course, the jury heard from Ms. Walker that, the evening before her disappearance, Ms. Meek committed to taking the children and leaving Mr. Meek.

Thus, the jury could have reasonably concluded that the convergence of two potent triggers stemming from his marital discord with Ms. Meek—that is, loss of family and loss of money—resulted in Mr. Meek forming the requisite intent to kill Ms. Meek

before her disappearance on February 21, 2002. *See Allen v. State*, 862 P.2d 487, 491 (Okla. Crim. App. 1993) ("The facts concerning his relationship with the secretary coupled with the evidence concerning his marital difficulties form a sound basis for his motive to murder his wife."); *see also Andrew v. State*, 164 P.3d 176, 192 (Okla. Crim. App. 2007) (finding "[t]he evidence of Appellant's affairs proved motive and intent in this case[,]" notwithstanding the fact that the affairs ended prior to the murder of her husband), *as corrected* (July 9, 2007), *opinion corrected on denial of reh'g*, 168 P.3d 1150 (Okla. Crim. App. 2007), *and overruled on other grounds by Williamson v. State*, 422 P.3d 752 (Okla. Crim. App. 2018); *Bland v. State*, 4 P.3d 702, 714 (Okla. Crim. App. 2000) (determining that there was sufficient circumstantial evidence of the appellant's malice aforethought where the facts presented at trial were that the appellant was unhappy with the victim because he felt he was stuck doing the victim's work, and the appellant had possession of the victim's property after the victim was killed); *cf. Villanueva v. State*, 695 P.2d 858, 860 (Okla. Crim. App. 1985) ("The conduct, attitude and feeling of the accused and the deceased toward each other may be shown in a murder case to establish motive, malice or intent."); *Wadley v. State*, 553 P.2d 520, 523 (Okla. Crim. App. 1976) (explaining that in marital homicide cases, evidence relating to "ill-feeling, ill-treatment, jealousy, prior assaults, personal violence, threats, or any similar conduct or attitude by the husband toward the wife" is admissible to show motive and malice).

Moreover, though the requisite intent to sustain a first-degree murder conviction may be formed "as the killing is being committed," *Tryon*, 423 P.3d at 636, the jury heard

evidence tending to show that Mr. Meek planned to kill Ms. Meek in the hours immediately preceding her death. Specifically, a reasonable jury could have concluded that Mr. Meek murdered Ms. Meek sometime *after* he purchased the 50-gallon storage bins from Wal-Mart—but before 3:20 p.m., when he reported off work and picked the children up to go camping—and that he intended to use the storage bins, when he purchased them, to dispose of Ms. Meek's body. Thus, the jury could infer that Mr. Meek not only formed the requisite intent to kill Ms. Meek prior to the time he committed the killing but also that he actually developed a bona fide plan to effectuate her murder and dispose of her body.

Based on the receipt and surveillance footage discussed by Agent Fielding, Mr. Meek purchased the storage bins from Wal-Mart around 1:00 p.m. on February 21st. According to Mr. Meek, Ms. Meek told him "*while* [he was] at Wal-Mart . . . to take the kids somewhere where they wouldn't see her leave." Aplt.'s Supp. App., Vol. 9, at 1051 (emphasis added). He further offered that he thought he heard Ms. Meek "walking around upstairs" *after* he returned from Wal-Mart. *Id.* at 1054. The timeline to which Mr. Meek testified was consistent with that he gave Agent Fielding during his February 28th interview, during which he claimed that Ms. Meek "was at the house when he returned" from purchasing the containers at Wal-Mart. *Id.*, Vol. 7, at 552. Thus, based on Mr. Meek's own words, a jury could rationally infer that Ms. Meek was alive while Mr. Meek was at Wal-Mart purchasing the storage bins.

The jury could further rationally infer that Mr. Meek purchased the storage bins in anticipation of storing Ms. Meek's body in them. Indeed, the Wal-Mart receipt showed

Mr. Meek purchased *only* the storage bins at the store—which belies the idea that Mr. Meek initially sought to plant in his early statements that he was focused on purchasing camping-related items at Wal-Mart and, instead, reinforces the inference that he had a singular, nefarious purpose when shopping at Wal-Mart, that is, to buy containers to store Ms. Meek's body. And, as discussed, evidence regarding Mr. Meek's travels to various bodies of water on the evening of his "camping trip," his leaving of his children alone in a tent for some time the night of the 21st, and law enforcement's failure to ever find or recover the storage bins despite searching the Meek residence supports the inference that he used the bins as intended. At the very least, the OCCA could reasonably conclude that the jury could rationally make these inferences.

The State, somewhat confusedly and without a clear citation to the record, suggested at oral argument that Mr. Meek killed Ms. Meek *before* he purchased the 50-gallon bins from Wal-Mart. Oral Arg. at 40:33–41:00. Likewise, the State suggested during closing argument at trial that Mr. Meek fought and killed her on the morning of February 21st before he took the children to school and day care, and urged that Jamie overheard the fatal conflict. *See* Aplt. Supp. App., Vol. 10, at 1310–11. Thus, as the State sees it, Mr. Meek killed Ms. Meek during the fight Jamie overheard, in which "mommy got quiet," and *then* purchased the storage bins to dispose of her corpse.

We conclude, however, that the OCCA could have reasonably read the record differently and determined that a rational jury could find that the evidence supported the inference that Ms. Meek was still alive "*while*" Mr. Meek shopped at Wal-Mart for the storage bins, which took place after Mr. Meek dropped the children off at daycare and

school. Aplt.'s Supp. App., Vol. 9, at 1051 (emphasis added); *see Harrington*, 562 U.S. at 102 ("Under § 2254(d), a habeas court must determine what arguments or theories supported or, as here, *could have supported*, the state court's decision. (emphasis added)). Evidence that Ms. Meek was alive while Mr. Meek purchased the storage bins that he would later use to dispose of her body could, in turn, support the inference that he developed the requisite intent to kill Ms. Meek before actually doing so. In this regard, we note that, though Ms. Meek's cell phone records did not evidence a call placed to Mr. Meek at the time he was at Wal-Mart, the Meek home had a landline and, according to Mr. Meek, Ms. Meek also owned a Trac phone (*see supra* note 5) that she used around the time of her disappearance. So, even though records from these other phones were not admitted into evidence, a jury could rationally infer that Ms. Meek placed a call to Mr. Meek from one of them, thereby corroborating Mr. Meek's testimony that Ms. Meek was alive both when he purchased the bins and when he returned home and heard her walking upstairs.

In like manner, the evidence supported a rational inference that the fight between her parents that Jamie overheard did not precipitate or result in Ms. Meek's death. Crediting Mr. Meek's testimony that Ms. Meek was alive while he was at Wal-Mart and upon his return home, there is no evidence that Jamie and the Meeks were together at the Meek residence when Mr. Meek killed Ms. Meek, as Mr. Meek testified that he dropped Jamie off at school, and the other children at daycare, the morning of February 21st. Notably, Ms. Bell did not specify when this fight occurred, and Mr. Meek offered that

Jamie could have overheard the conflict that ended when "mommy got quiet" on February 20th.

Ample evidence in the record—including statements Ms. Meek made to multiple witnesses and also witness identification of markings on Ms. Meek's body—supports the conclusion that Mr. Meek non-fatally abused Ms. Meek on the 20th. When considering the sufficiency of the evidence and "faced with a record of . . . facts that supports conflicting inferences," we "must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and [we] must defer to that resolution." *Messer*, 74 F.3d at 1013 (quoting *Wright v. West*, 505 U.S. 277, 296–97 (1992)). Thus, a rational jury could conclude that the fight Jamie overheard in which "mommy got quiet" occurred on the 20th and was not fatal because, according to Mr. Meek, Ms. Meek was alive on the 21st. As such, the jury could infer that Mr. Meek murdered Ms. Meek after purchasing the bins from Wal-Mart, and thus that he murdered her with the premeditation required by his conviction for murder in the first degree (indeed, with more premeditation than required).

In his opening brief, Mr. Meek speculates that, having convicted him, the jury must have disbelieved his testimony and prior statements, and thus would not have relied on them to support its guilty verdict (including to establish the operative timeline). However, false narratives are often laden with accurate facts to make them more believable. *See Williamson v. United States*, 512 U.S. 594, 599-600 (1994) ("One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature."). Accordingly, we have

recognized that a "jury may believe a part of a witness' testimony, and disbelieve other parts." *United States v. Cueto*, 628 F.2d 1273, 1275 (10th Cir. 1980). So, considering its directive to "view[] the evidence in the light most favorable to the prosecution," *Jackson*, 443 U.S. at 319, the OCCA could have reasonably determined that the jury rationally credited the portions of Mr. Meek's testimony that helped establish his culpability and not those self-serving statements that tended to exonerate him of his first-degree murder charge, such as, for example, his insistence that he acquiesced to his wife's departure.

Moreover, Mr. Meek's evolving story regarding the 50-gallon storage bins also supported the reasonable inference that he did, in fact, develop a plan to kill Ms. Meek prior to, or during, his trip to Wal-Mart. Specifically, in his initial statement to police, Mr. Meek described going to Wal-Mart to purchase "camping stuff." Aplt.'s Supp. App., Vol. 12, at 12–13 (State's Ex. 5). In the subsequent interview with Agent Fielding, Mr. Meek clarified that he purchased large plastic containers *and* other camping supplies. By 2003, in the Guardianship Hearing, Mr. Meek changed his story again, testifying that he *only* purchased the 50-gallon plastic containers (ostensibly to store camping gear)—a fact he repeated at trial. And, as previously noted, Mr. Meek's Wal-Mart receipt shows that he did, in fact, only purchase two 50-gallon storage containers.

Reviewing this sequence in the light most favorable to the prosecution, the OCCA would not have been unreasonable in determining that a rational jury could infer that Mr. Meek deliberately omitted reference to the storage bins from his first statement, both because it evidenced his premeditation and because he used them to dispose of Ms. Meek's body. *See McElmurry v. State*, 60 P.3d 4, 19 (Okla. Crim. App. 2002) (noting

that statements "designed to conceal guilt, may on occasion be more convincing evidence of guilt than truthful admissions"); *see also Davis v. State*, 103 P.3d 70, 78 (Okla. Crim. App. 2004) ("The fact that Davis' statements and his trial testimony were inconsistent with each other and with the physical evidence was a relevant consideration in determining his truthfulness and ultimately his guilt.").

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Accordingly, given our deferential posture, we cannot say that the OCCA unreasonably applied *Jackson* as to any element of Mr. Meek's first-degree murder conviction. Through his contrary factual arguments, which we have referenced *supra*, Mr. Meek effectively asks us to accept his version of events. But, as noted, a federal court sitting in habeas may not "weigh conflicting evidence," which would effectively displace the jury's evaluation of the evidence. *Messer*, 74 F.4d at 1013 (quotation omitted). Here, the jury clearly resolved Mr. Meek's testimony, as well as any directly conflicting testimony, in favor of the prosecution.

Mr. Meek also argues that the OCCA's holding was erroneous in light of two Michigan and Illinois state-court cases featuring similar facts on direct appeal, *People v. Fisher*, 483 N.W.2d 452, 453 (Mich. App. 1992), and *People v. Casciaro*, 49 N.E.3d 39, 44 (Ill. Ct. App. 2015). Here, too, Mr. Meek misapprehends the nature of federal habeas review. Even if these two cases did indicate that the OCCA's application of *Jackson* was erroneous, in the context of habeas review, that would offer Mr. Meek no succor. The "*pivotal* question" framing our inquiry under § 2254(d)(1) is whether the state court's "application" of clearly established Supreme Court law—here, the *Jackson* standard—

"was unreasonable." *Richter*, 562 U.S. at 101 (emphasis added). In that regard, recall that "a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court." *Smith*, 565 U.S. at 2. In short, the question is whether the OCCA's application of *Jackson* is beyond the realm of "fairminded" disagreement among jurists. *Richter*, 562 U.S. at 103. We answer that question in the negative. *See Dunn v. Madison*, --- U.S. ----, 138 S. Ct. 9, 11 (2017) (per curiam) (noting that the demanding unreasonable application standard requires "an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement" (quoting *Richter*, 562 U.S. at 103)). Accordingly, we uphold the district court's denial of federal habeas relief with respect to Mr. Meek's sufficiency-of-the-evidence claim.

B. Ineffective Assistance of Counsel

Mr. Meek next presents three incidents as bases for his ineffective-assistance claims, specifically trial counsel's failure: (1) to timely and properly present for admission into evidence the Goodbye Note; (2) to object to numerous instances of hearsay testimony; and (3) to object to an improper statement during an exchange between Agent Fielding and the trial prosecutor. He argues that the OCCA unreasonably applied *Strickland v. Washington* in denying relief on each of those claims.

We disagree. Because Mr. Meek has not shown that the OCCA's resolution of his ineffective-assistance claims is contrary to or an unreasonable application of clearly established federal law, or premised on an unreasonable determination of fact, we uphold the district court's denial of habeas relief on these claims.

1. Legal Standard

The Sixth Amendment guarantees criminal defendants effective assistance of counsel. *Strickland* sets forth the two-part test a petitioner must satisfy to prevail on an ineffective-assistance claim. *See* 466 U.S. at 687–88.[17] Under the test's first prong, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness," measured "under prevailing professional norms," and considered in light of all of the circumstances. *Id.* at 688. "Judicial scrutiny of counsel's performance must be highly deferential[,]" making every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* at 689.

In fact, in reviewing for deficient performance, "we . . . start the analysis [with the presumption] that an attorney acted in an objectively reasonable manner and that an attorney's challenged conduct *might* have been part of a sound trial strategy." *Bullock v. Carver*, 297 F.3d 1036, 1046 (10th Cir. 2002); *see Strickland*, 466 U.S. at 689 (noting that courts are to "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy'" (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955))).

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[17] It is undisputed that *Strickland* provides the clearly established Supreme Court law for purposes of § 2254(d)(1), with respect to ineffective-assistance claims like Mr. Meek's. *See Strickland*, 466 U.S. at 684, 686 (recognizing that "the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial" and that the "right to counsel is the right to effective assistance of counsel" (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970))).

We further consider that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable," *Strickland*, 466 U.S. at 690—"unless they were 'completely unreasonable, not merely wrong.'" *Moore v. Marr*, 254 F.3d 1235, 1239 (10th Cir. 2001) (quoting *Fox v. Ward*, 200 F.3d 1286, 1296 (10th Cir. 2000)).

Deficient performance alone, though, is insufficient to entitle a petitioner to relief. Under *Strickland*'s second prong, a petitioner must show counsel's constitutionally deficient performance resulted in actual prejudice. *See Strickland*, 466 U.S. at 687. Prejudice exists if there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability, in turn, "is a probability sufficient to undermine confidence in the outcome." *Id.* Satisfaction of both prongs is necessary to state a claim of ineffective assistance. *See id.* at 687 ("Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.").

Moreover, for state habeas petitioners, securing relief on their ineffective-assistance claims is especially difficult. That is because we must view the state court's application of *Strickland*'s unquestionably deferential standard through the deferential prism of AEDPA. In other words, on top of the deferential review that *Strickland* demands that all courts accord to *counsel's performance*, AEDPA also requires federal courts to accord deference to the *state court's assessment* of counsel's performance, making habeas review of ineffective-assistance claims "doubly deferential." *Knowles v.*

Mirzayance, 556 U.S. 111, 123 (2009); *see also Yarborough v. Gentry*, 540 U.S. 1, 5–6 (2003) (per curiam) ("Judicial review of a defense attorney's [conduct] is therefore highly deferential—and doubly deferential when it is conducted through the lens of federal habeas."); *Richter*, 562 U.S. at 105 ("The standards created by *Strickland* and § 2254(d) are both 'highly deferential,' and when the two apply in tandem, review is 'doubly' so." (citations omitted) (first quoting *Strickland*, 466 U.S. at 689; and then quoting *Knowles*, 556 U.S. at 123)). "Given the two layers of deference, [we] must consider 'whether there is *any reasonable argument* that counsel satisfied *Strickland*'s deferential standard.'" *Menzies v. Powell*, 52 F.4th 1178, 1196 (10th Cir. 2022) (quoting *Ellis v. Raemisch*, 872 F.3d 1064, 1084 (10th Cir. 2017)), *petition for cert. filed* (U.S. May 8, 2023) (No. 22-7482).

More generally, "[t]he question 'is not whether a federal court believes the state court's determination' under *Strickland* 'was incorrect but whether that determination was unreasonable—a substantially higher threshold.'" *Knowles*, 556 U.S. at 123 (quoting *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007)). Finally, our analysis is further informed by the "general" nature of the *Strickland* standard. *Id.*; *see Acosta v. Raemisch*, 877 F.3d 918, 925 (10th Cir. 2017) (noting that under AEDPA "our inquiry is informed by the specificity of the governing rule"). General rules, like the *Strickland* standard, offer courts greater "leeway . . . in reaching outcomes in case-by-case determinations." *Alvarado*, 541 U.S. at 664. In other words, "the range of reasonable applications is substantial" with respect to the state court's application of *Strickland*. *Richter*, 562 U.S. at 105.

2. Analysis

As noted, Mr. Meek alleges that trial counsel was ineffective in three specific ways. We now discuss each in turn and conclude that his claims are unavailing. Accordingly, we uphold the district court's denial of habeas relief as to each of Mr. Meek's ineffective-assistance claims.

a. Failure to Timely and Properly Proffer for Admission the Goodbye Note

Mr. Meek's first ineffective-assistance argument centers around the undated, handwritten Goodbye Note purportedly left by Ms. Meek for Mr. Meek prior to her disappearance. He argues that the OCCA unreasonably applied *Strickland* because counsel's failure to comply with the pre-trial discovery rules amounted to deficient performance. In addition, Mr. Meek faults counsel for failing to make the Goodbye Note part of the trial record through an offer of proof; his failure to do so obliged him to move the OCCA to supplement the record as part of the ineffective-assistance claim that he raised on direct appeal. Absent this deficient performance, Mr. Meek contends that a reasonable probability exists that the outcome of his trial would have been different, as the Goodbye Note was "critical" to solidifying his defense.[18] Aplt.'s Opening Br. at 44.

We conclude that the OCCA did not unreasonably apply *Strickland* in determining that Mr. Meek "suffered no prejudice in the failure of counsel's attempt to introduce" the

[18] Insofar as Mr. Meek's arguments could be construed as advancing a discrete claim—apart from his ineffective-assistance claim—that he was denied the right to put on a defense by the court's decision to exclude the Goodbye Note, he was not granted a COA on any such claim, and, therefore, we do not have jurisdiction to hear it. *See* Order Granting COA.

Goodbye Note. Aplt.'s App. at 6. Considering our directive to "determine what arguments or theories supported or . . . could have supported . . . the state court's decision," *Richter*, 562 U.S. at 102, and viewing the evidence in the State's favor, we conclude that the OCCA could have reasonably determined that there is not a reasonable probability that the outcome would have been different if counsel had secured the admission of the Goodbye Note. In other words, the OCCA could have reasonably concluded that there was not a reasonable probability that a rational jury would have acquitted Mr. Meek if the Goodbye Note had been admitted—especially given the considerable circumstantial evidence tending to show his guilt. More to the point, a "reasonable argument" can be made to support the OCCA's no-prejudice conclusion. *Id.* at 105.

The OCCA could reasonably conclude that, just like the state-court trial judge, the jury was unlikely to accord the Goodbye Note much weight, as it was undated, unsigned, discovered under highly suspicious circumstances, and subject only to authentication by Mr. Meek, whom, as already discussed, a rational jury could find to be an incredible witness on matters related to his culpability. *Cf. United States v. Roane*, 378 F.3d 382, 409 n.15 (4th Cir. 2004) (expressing doubt that the "less credible" "testimony of the potential alibi witnesses" would have "create[d] a reasonable probability that, but for the lack of such evidence 'the result of the proceeding would have been different'" (quoting *Strickland*, 466 U.S. at 689)); *cf. also Moore v. DiGuglielmo*, 489 F. App'x 618, 621, 627 (3d Cir. 2012) (unpublished) (denying relief under § 2254(d) where the state court determined that "the new evidence was not credible").

The Goodbye Note's significance was further weakened by Mr. Meek's own statements to police and testimony, which made it considerably less believable that Ms. Meek would have had a reason for leaving the note. In particular, Mr. Meek had indicated that he had spoken with Ms. Meek about her impending departure. Yet Mr. Meek offers no explanation here for why Ms. Meek would write the Goodbye Note when she already had said goodbye, according to him, in person.

Relatedly, according to Mr. Meek, some of Ms. Meek's final words to him—she was upset and "tired of everyone's bullshit"—strike a much different tone than the Goodbye Note, in which Ms. Meek purportedly expressed love for her husband. Aplt.'s Supp. App., Vol. 12, at 12–13 (State's Ex. 5). Indeed, the expression of love contained in the Goodbye Note was inconsistent with the tone and tenor of *every* other statement that the defense attributed to Ms. Meek—whom it portrayed as violent, manipulative, and unquestionably *unloving*, to both her children and her husband. Mr. Meek, himself, testified that his reunion with Ms. Meek following their second separation was purely transactional: the Meeks did not reconcile "because [they] [were] falling back in love or anything like that," but because it was "easier financial[ly]" for Ms. Meek and Mr. Meek was afraid she would "take the kids and move off." *Id.*, Vol. 9, at 1027–28. Thus, the Goodbye Note actually was at odds with the thrust of Mr. Meek's own testimony and would have had the effect of *undermining* his credibility—not to mention providing the prosecution with an inviting impeachment opportunity.

Finally, Mr. Meek claims to have found the Goodbye Note in his lunch box approximately one month after Ms. Meek's disappearance. While that delayed finding

might explain away, as his trial counsel argued, Mr. Meek's failure to discuss it in his interviews with Officer James and Agent Fielding, it does little to address his failure in bringing the Note to the police's attention once he discovered it. After all, Mr. Meek could have reasonably inferred that he was under investigation after Agent Fielding voiced his suspicions during their February 28th interview and law enforcement searched his home that same day.

Mr. Meek makes no attempt here to offer an explanation that harmonizes these disparate facts. Instead, Mr. Meek rests on his mere insistence that the jury would have exonerated him if it had seen the Goodbye Note. That is not enough to carry his burden on habeas review.

Hewing closely to our duty to consider "arguments or theories support[ing]" the reasonableness of the OCCA's conclusion, we cannot overlook the evidentiary weaknesses—as discussed *supra*—attending to the Goodbye Note. *Richter*, 562 U.S. at 102; *see also Frost*, 749 F.3d at 1229 ("[T]he critical question is whether the [state court's] *conclusion* was itself unreasonable."). Accordingly, we determine that Mr. Meek has failed to demonstrate that the OCCA's application of *Strickland*'s prejudice standard was "so lacking in justification that there was an error . . . beyond any possibility for fairminded disagreement." *Titlow*, 571 U.S. at 19–20 (quoting *Richter*, 562 U.S. at 103).

b. Failure to Object to Hearsay

Mr. Meek next contends that hearsay statements purportedly made by Ms. Meek and Jamie were improperly introduced at trial. Mr. Meek takes aim at the following statements by witnesses, attacking them on hearsay and Confrontation Clause grounds:

1. Officer James's testimony about what Ms. Meek said concerning Mr. Meek's abuse of her;

2. Ms. Howell's testimony about the phone conversation she had with Ms. Meek;

3. Ms. Walker's statements about what Jamie told Ms. Walker regarding the last time she saw Ms. Meek;

4. Ms. Bell's testimony about what Jamie told her concerning the last time Jamie saw Ms. Meek and the fight between Mr. Meek and Ms. Meek;

5. Ms. Walker's statements recounting that Ms. Meek told Ms. Walker that Mr. Meek had beaten her;

6. Ms. Abbott's testimony about a conversation she had with Ms. Meek shortly before Ms. Meek's disappearance;

7. Mr. McDaniel's testimony about what Ms. Meek said concerning Mr. Meek's abuse of Ms. Meek; and

8. Ms. Schooley's testimony about what Ms. Meek said concerning Mr. Meek's abuse of Ms. Meek.

See Aplt.'s Opening Br. at 46–47.

Mr. Meek claims that his trial counsel's failure to object to the "great bulk" of these statements constituted constitutionally deficient performance and that their "prejudice is obvious." *Id.* at 48. The OCCA, however, determined that counsel did not perform in a constitutionally deficient manner because strategy motivated his failure to object. We conclude that the OCCA's determination in this regard does not reflect an unreasonable application of *Strickland*.

At the outset we note that the OCCA based its no-deficient-performance conclusion on the factual determination that counsel acted strategically.[19] *See Wood v. Allen*, 558 U.S. 290, 301–02 (2010) (characterizing as "factual" a state court's "determination that counsel's failure to pursue or present evidence of [petitioner's] mental deficiencies was . . . the result of a deliberate decision"); *Harris v. Sharp*, 941 F.3d 962, 991–92 (10th Cir. 2019) (treating the OCCA's determination that counsel acted strategically as a "factual determination"); *see also Morales v. Thaler*, 714 F.3d 295, 302–03 (5th Cir. 2013) ("The central question is whether the state courts' factual finding—that [petitioner's attorneys] made a strategic and tactical decision . . .—was objectively unreasonable in light of the evidence presented in the state court proceedings." (footnote omitted)).

Mr. Meek does not meaningfully contest this factual determination, even though he bears the burden of showing that it was "unreasonable." § 2254(d)(2); *see Grant v. Trammell*, 727 F.3d 1006, 1024 (10th Cir. 2013) (noting that § 2254(d)(2)'s standard "is . . . 'restrictive'" and "requir[es] a *showing* more powerful than that 'the federal habeas court would have reached a different conclusion in the first instance'" (emphasis added) (first quoting *Johnson v. Williams*, 568 U.S. 289, 293 (2013); and then quoting *Wood*, 558 U.S. at 301)). Rather, Mr. Meek asserts that he "does not comprehend" the OCCA's "view" that counsel's failure to object was strategic, and "fails to see how allowing

[19] Mr. Meek's federal habeas counsel acknowledged that the OCCA's finding that counsel strategically acquiesced to the admission of hearsay was a factual determination. Oral Arg. at 3:17–21.

damaging testimony without objection can be considered a viable 'strategy' in a murder trial." Aplt.'s Opening Br. at 49; *see also* Aplt.'s Reply Br. at 15 ("Again, [Mr.] Meek does not comprehend these views of the evidence, and questions whether such arguments can be made in this Court in good faith. . . . [H]e is totally mystified by the assertion of the State that they somehow actually helped [Mr.] Meek at trial.").

Thus, Mr. Meek's arguments regarding the OCCA's factual determination that counsel acted strategically rest weakly on mere incredulity and not—as they properly should—on record citation and legal argument.[20] Mr. Meek's incredulity, however, is no substitute for meaningful legal argument. This is especially so because Mr. Meek bears the burden of proof and is obliged to advance his position in the context of our "doubly deferential" standard of review. *Knowles*, 556 U.S. at 123. Consequently, we deem effectively without challenge the OCCA's factual determination that Mr. Meek's counsel acted strategically. *Cf. Nixon v. City and Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015) ("The first task of an appellant is to explain to us why [another court's] decision was wrong. Recitation of a tale of apparent injustice may assist in that task, but it cannot substitute for legal argument.").

Mr. Meek relatedly, and misguidedly, declares that "*[t]he* question is whether there was prejudice under *Strickland*." Aplt.'s Opening Br. at 49 (emphasis added);

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[20] During oral argument, Mr. Meek's federal habeas counsel claimed that he argued, in his briefing, that the OCCA's factual finding as to trial counsel's strategic acquiescence was "unreasonable" under § 2254(d)(2). Oral Arg. at 4:02–03. This representation is mistaken. Mr. Meek did not cite to § 2254(d)(2), let alone develop a meaningful argument that the OCCA's factual determination was unreasonable.

Aplt.'s Reply Br. at 16. Though prejudice—the second prong of the *Strickland* standard—is *a* question, Mr. Meek must satisfy *both* prongs of the *Strickland* standard to prevail on his ineffective-assistance claim. And here, as to the first prong of the standard—constitutionally deficient performance—it is patent in the context of AEDPA review that Mr. Meek's showing falls short. He must demonstrate that the OCCA unreasonably applied *Strickland* in concluding that counsel did not render constitutionally deficient performance. *See Richter*, 562 U.S. at 101 ("The pivotal question is whether the state court's application of the *Strickland* standard was unreasonable."). Yet Mr. Meek's showing regarding the performance prong is hardly discernible; it certainly is not cogent.

Indeed, the pertinent portion of Mr. Meek's briefing omits any reference to the "unreasonable application" standard. Instead, he states that "the great bulk of the hearsay statements were inadmissible under standard state hearsay evidentiary rules," "testimonial . . . under *Crawford*," and that "mostly speculation" supports the cited exceptions to the hearsay rule used to justify the admission. Aplt.'s Reply Br. at 15–16. Such broad, conclusory statements are insufficient to carry Mr. Meek's burden. On direct appeal, the OCCA held that there was no plain error because the alleged hearsay statements at issue fell within a recognized hearsay exception under Oklahoma law: they were "utilized to show the state-of-mind and to provide motive for the killing." Aplt.'s App. at 6. And Oklahoma has an exception to the hearsay rule that permits statements "of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health." Okla. Stat. tit. 12, § 2803(3) (2004). Notably, applying this exception in the context of domestic

homicide cases, the OCCA has held that "[a] victim's hearsay statements describing threats and beatings are admissible to show the victim's state of mind and indicate fear," and "evidence of prior threats, assaults, and battery on a victim is proper to show the victim's state of mind." *Tryon*, 423 P.3d at 634 (quoting *Hooper v. State*, 947 P.2d 1090, 1102 (Okla. Crim. App. 1997)). Mr. Meek fails, however, to engage with the OCCA's analysis of the relevant exception. We are under no obligation "to fill in the blanks of a litigant's inadequate brief," and we discern no reason to do so here. *United States v. Banks*, 884 F.3d 998, 1024 (10th Cir. 2018).

Furthermore, these briefing deficiencies aside, we do not find the OCCA's application of *Strickland*'s performance prong to trial counsel's acquiescence to the admission of hearsay evidence beyond the bounds of "fairminded" disagreement, *Richter*, 562 U.S. at 101, especially given our starting presumption that Mr. Meek's counsel "acted in an objectively reasonably manner and that an attorney's challenged conduct *might* have been part of a sound trial strategy," *Bullock*, 297 F.3d at 1046. In particular, the record provides support for the OCCA's conclusion and shows that Mr. Meek's defense theorized that Ms. Meek despised her husband—to the point of manufacturing abuse allegations—and felt disillusioned with married life, and so left. Thus, the complained of hearsay statements, including Ms. Meek's arguably testimonial statements to Officer James, have a double-edged nature. Specifically, the jury could have perceived the evidence as supportive of Mr. Meek's general defense theory—regarding Ms. Meek's general unhappiness with her volatile and violent marriage and desire to flee—even while

at the same time the prosecution advanced the evidence in the hopes that the jury would view it as incriminating.

Though we recognize that the incriminating "edge" of certain evidence may be "sharper" than its mitigating counterpart, Mr. Meek cites no decision—from the Supreme Court or otherwise—holding that counsel performs deficiently when failing to object to doubled-edged evidence that, as here, could be viewed as supporting the defense's theory of the case. *Wackerly v. Workman*, 580 F.3d 1171, 1177–78 (10th Cir. 2009). And our own precedent confirms that counsel may concede to, or admit, unflattering or even incriminating facts as part of an effective trial strategy. *See, e.g.*, *Hale v. Gibson*, 227 F.3d 1298, 1323 (10th Cir. 2000) (holding counsel made a "reasonable strategic decision to concede some involvement by [defendant], given the overwhelming evidence presented at trial, and [to] focus[] on the extent of his involvement and whether others could have been involved"); *Fowler v. Ward*, 200 F.3d 1302, 1310–11 (10th Cir. 2000) (holding that there was no ineffective assistance where counsel conceded defendant's presence at crime scene because the concession was consistent with the defense's theory that defendant was not the principal in alleged conspiracy); *Williams v. Trammell*, 782 F.3d 1184, 1203 (10th Cir. 2015) (holding that counsel was not ineffective in introducing evidence of other crimes because "[t]he wad of cash and matching shoeprints needed an explanation," and "by 'owning up' to conduct he could hardly deny, the defense had a chance to bolster credibility").

In assessing ineffective-assistance claims in the habeas context, we "defer to the state court's determination that counsel's performance was not deficient and, further,

defer to the attorney's decision in how to best represent a client." *Grant*, 886 F.3d at 903. In light of this doubly deferential standard, we conclude that Mr. Meek has not met his burden of showing that the OCCA unreasonably applied *Strickland* when it determined that his counsel strategically acquiesced to the introduction of evidence that could be seen as supporting his general defense. Stated otherwise, we conclude that Mr. Meek has failed to demonstrate that the OCCA's determination that counsel did not perform in this regard in a constitutionally deficient manner was objectively unreasonable.

c. Failure to Object to Agent Fielding's Comment

Rounding out his ineffective-assistance claims, Mr. Meek argues that trial counsel was ineffective in failing to object to what he characterizes as an evidentiary harpoon and unconstitutional comment on his request for a lawyer during an exchange between the trial prosecutor and Agent Fielding. More specifically, Mr. Meek appears to contend, first, that the OCCA's own precedent contradicted its conclusion that Agent Fielding's comment did not amount to an evidentiary harpoon, and second, that the remark reflected an unconstitutional comment on Mr. Meek's invocation of his right to counsel, and trial counsel therefore should have objected to it. We analyze both dimensions of this claim and find Mr. Meek's arguments unavailing. Accordingly, we uphold the district court's denial of habeas relief on this ineffective-assistance claim.

i. Mr. Meek's Argument that the OCCA Violated its Own Law Fails

Mr. Meek alleges that his trial counsel was ineffective in failing to object to an "evidentiary harpoon" delivered by Agent Fielding on direct examination. Aplt.'s Opening Br. at 51. We conclude that this challenge—which turns on attacking the

OCCA's interpretation of its own law—falls outside the scope of federal habeas review. Accordingly, we uphold the district court's denial of habeas relief as to this particular dimension of Mr. Meek's claim.

During direct examination, the state prosecutor and Agent Fielding had the following exchange:

> Prosecutor: And at some point[,] what stopped the interview [of Mr. Meek] I guess? At some point was it just over or what happened?
>
> Agent Fielding: Well, I mean at the end of the interview I had *confronted Jerry that I believed there was more to the story or that he wasn't being truthful or confronted him that he might be involved in Hope's disappearance. He told me he didn't want to talk to me anymore and requested an attorney*, and that was pretty much my extent of talking to Mr. Meek.

Aplt.'s Opening Br. at 50 (emphasis added).

The OCCA found that Agent Fielding's answer "did not meet the definition of an evidentiary harpoon, nor did the question rise to the level of prosecutorial misconduct." Aplt.'s App. at 7. "[A]s no error occurred," the OCCA rejected Mr. Meek's ineffective-assistance claim on the basis that Agent Fielding's comment did not "prejudice" Mr. Meek. *Id.* at 8.

Though ultimately concluding that Mr. Meek suffered no prejudice, the OCCA's ineffective-assistance analysis implicated *Strickland*'s first prong too—*viz*., the performance prong. That is, implicit in the OCCA's analysis is that trial counsel's performance did not fall below an "objective standard of reasonableness" in failing to lodge a meritless objection. *See Simpson*, 912 F.3d at 600 (noting no deficient performance where counsel failed to object to "legally accurate jury instructions");

Castro v. Ward, 138 F.3d 810, 830 (10th Cir. 1998) ("Since we have held the instruction was not erroneous, counsel was obviously not ineffective in failing to object to it."); *see also Grant*, 886 F.3d at 905–06 (noting that because, "[o]n habeas review, we properly eschew the role of strict English teacher, ... our inquiry relates to the overall substance of the state court's analysis and the conclusion it thereafter makes," even when the state court speaks opaquely). Stated otherwise, in substance, the OCCA rejected Mr. Meek's ineffective-assistance claim both because there was no deficient performance in failing to object and because the comment did not prejudice Mr. Meek.

On appeal, Mr. Meek asserts that Agent Fielding's comment represents "an evidentiary harpoon by a seasoned law enforcement officer designed to skewer [him] and show that he was guilty before the jury because he wanted to lawyer up rather than answer questions from a police officer."[21] Aplt.'s Opening Br. at 51. He suggests—but does not explicitly argue—that counsel was deficient in failing to object to the purported "evidentiary harpoon." *See generally id.* at 50–52; *see also id.* at 49 ("Finally, the third

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[21] Under Oklahoma law, evidentiary harpoons bear six characteristics:

> (1) they are generally made by experienced police officers, (2) they are voluntary statements; (3) they are willfully jabbed rather than inadvertent; (4) they inject information concerning other crimes; (5) they are calculated to prejudice the defendant; and (6) they are prejudicial to the rights of the defendant on trial.

Scott v. State, 808 P.2d 73, 76 (Okla. Crim. App. 1991) (quoting *Pierce v. State*, 786 P.2d 1255, 1260 (Okla. Crim. App. 1990)); *Bruner v. State*, 612 P.2d 1375, 1378–79 (Okla. Crim. App. 1980)).

instance of ineffective assistance of counsel involves . . . [Agent] Fielding . . . ."); *id.* at 50 ("Unfortunately, trial counsel failed to object, move for a mistrial, or seek an admonition from the trial court.").

Insofar as Mr. Meek seeks to show that his counsel's performance "fell below an objective standard of reasonableness," *Strickland*, 466 U.S. at 688, his legal argument revolves almost entirely around his contention that the OCCA misapplied its own evidentiary law.[22] Specifically, Mr. Meek argues:

> [O]ther Oklahoma cases have found harpoons when an experienced police officer makes voluntary statements prejudicial to the rights of the defendant on trial . . . [and have] not limited such harpoons to statements relating to other crimes. *See Payne v. State*, 1965 OK CR 90, ¶ 20, 403 P.2d 731; *Riddle v. State*, 1962 OK CR 86, 373 P.2d 832.
>
> Thus, to the extent that the OCCA sought to limit the definition of an evidentiary harpoon to testimony about other crimes, such a limitation is in contradiction to its own published cases in *Payne* and *Riddle*.
>
> Under [such OCCA caselaw], Agent Fielding quite obviously hurled an evidentiary harpoon designed to prejudice [Mr.]

[22] Mr. Meek claims to also "rel[y] on authority from this circuit concerning the definition of an evidentiary harpoon," and he cites *United States v. Cavely*, 318 F.3d 987, 996 n.2 (10th Cir. 2003), "for the proposition that this Circuit has described an 'evidentiary harpoon' as a metaphorical term used to describe an attempt by a government witness to deliberately offer inadmissible testimony for the purpose of prejudicing the defendant." Aplt.'s Opening Br. at 51. For this reason, Mr. Meek rejects the district court's characterization that he relied "solely on Oklahoma law" to develop his evidentiary harpoon argument. *Id.* (quoting Aplt.'s App. at 43). But Mr. Meek's reliance on our caselaw ends there. Beyond citing *Cavely*'s alternative definition of an evidentiary harpoon, he does not develop any argument—or cite any federal authority—in support of his assertion that Agent Fielding's comment constituted an evidentiary harpoon. Consequently, he is limited to the arguments that he did brief and, under the party presentation principle, we not only will not, but "cannot make arguments for him." *United States v. Yelloweagle*, 643 F.3d 1275, 1284 (10th Cir. 2011).

> Meek by making him look evasive and guilty when he stopped answering questions after being "confronted" and asked for a lawyer.

Aplt.'s Opening Br. at 52.

We understand Mr. Meek to argue that the OCCA's finding that Agent Fielding's comment did not reflect an evidentiary harpoon is inconsistent with Oklahoma law. In Mr. Meek's view, counsel was ineffective in failing to object to what he believes Oklahoma law classifies as an evidentiary harpoon. *See* Aplt.'s Opening Br. at 51–52. That argument fails, however, because it would require us to conclude that the OCCA erroneously interpreted its own law. "On collateral review," we emphatically "cannot review a state court's interpretation of its own state law." *House*, 527 F.3d at 1025 (citing *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991)); *see also Estelle*, 502 U.S. at 67–68 (noting that whether a state court misapplied state law "is no[t] part of a federal court's habeas review of a state conviction" and emphasizing "that it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions"). Rather, "[f]ederal habeas review . . . is limited to violations of constitutional rights." *Thornburg v. Mullin*, 422 F.3d 1113, 1128–29 (10th Cir. 2005). Accordingly, we uphold the district court's denial of habeas relief as to this particular dimension of Mr. Meek's claim.

ii. The Evolution of Mr. Meek's "Unconstitutional Comment" Argument

Second, Mr. Meek argues that it was "blatant prosecutorial misconduct for [the prosecutor to] elicit[]" Agent Fielding's reference to Mr. Meek's invocation of his Fifth Amendment rights as established by *Griffin v. California*, 380 U.S. 609 (1965). Aplt.'s

Opening Br. at 51, 53–54. And he says that his counsel should have objected to that misconduct. That is, apart from failing to object on state evidentiary grounds, Mr. Meek theorizes that his attorney rendered constitutionally deficient representation in failing to object to unconstitutional prosecutorial misconduct in the form of the prosecutor's eliciting of Agent Fielding's comment. However, Mr. Meek failed, at the very least, to make this argument as clearly in his opening brief (i.e., Brief-in-Chief) on direct appeal.

Specifically, on direct appeal, Mr. Meek alleged that "trial counsel was ineffective" by failing to object to an evidentiary harpoon. In particular, he argued:

> Request for Lawyer: In Proposition IV, *supra*, [Mr.] Meek pointed out the outrageous evidentiary harpoon made by Agent Fielding when he told the jury that [Mr.] Meek requested a lawyer after Agent Fielding had "confronted" him about his story regarding [Ms. Meek's] disappearance. Trial counsel, however, did not object to the harpoon, move for a mistrial, or request an admonition. This constituted waiver of the issue (except for plain error), and was clearly deficient performance which resulted in prejudice because the harpoon was so blatant.

Aplee.'s Supp. App. at 51. As previously noted, the OCCA rejected Mr. Meek's claim, concluding that no error occurred *under Oklahoma law* and, therefore, no prejudice cognizable under *Strickland* could result from counsel's failure to object. *See* Aplt.'s App. at 8.

However, elsewhere in his opening brief, Mr. Meek did briefly allude to prosecutorial misconduct, along with complaining about the evidentiary harpoon. More specifically, he argued both that Agent Fielding's comment represented an evidentiary harpoon *and* that the *prosecutor's* elicitation of the comment amounted to "stark prosecutorial misconduct." Aplee.'s Supp. App. at 46. The State responded that Mr.

Meek improperly raised his prosecutorial misconduct claim by grouping that "proposition of error" together with his evidentiary harpoon claim. *Id.* at 105. It asked the OCCA to deem the prosecutorial misconduct challenge waived. Resisting this effort, Mr. Meek responded in his reply brief that his substantive evidentiary harpoon claim "involves the factual assertion that the prosecutor asked the questions to Agent Fielding, and that Agent Fielding gave the answer that he did, which resulted in the jury illegally hearing that [Mr.] Meek asked for a lawyer instead of choosing to be questioned by Agent Fielding"—an "unconstitutional" sequence of events. *Id.* at 125. Mr. Meek did not cite any authority for that proposition in his reply brief. For its part, the OCCA deemed Mr. Meek's claim "that the answer was a comment on [his] invocation of his Constitutional rights . . . . *waived* for consideration," noting both its prohibition against using reply briefs to raise new propositions and Mr. Meek's failure to cite any authority in his reply brief. Aplt.'s App. at 8 n.4 (emphasis added).[23]

[23] Mr. Meek argued in his Petition for Rehearing that he had not waived his "claim of deliberate comment on [the] invocation of his constitutional rights," which he urged required reversal of his conviction. Aplt.'s App. at 12–13. And, citing to his ineffective-assistance claim regarding the evidentiary harpoon, Mr. Meek argued that he had "in no way waived this issue." *Id.* at 12.

The OCCA found that argument unavailing and denied the petition "because [Mr. Meek] [did] not show that some question decisive of the case and duly submitted by the attorney of record ha[d] been overlooked by the Court." *Id.* at 22. The OCCA further advised both that the "[c]ases cited in his brief and repeated in his motion for rehearing [were] cases supporting his prosecutorial misconduct claim *raised in proposition four*, which was addressed and denied in th[e] Court's Opinion" and that it "fully explored [Mr.] Meek's propositions of error and none were overlooked." *Id.* (emphasis added).

Yet in federal habeas proceedings, the district court recognized that Mr. Meek argued, as one aspect of his ineffective-assistance claim, that counsel performed deficiently in failing to object to an unconstitutional comment. Specifically, the district court stated:

> To the extent [Mr. Meek] is attempting to raise a claim that trial counsel was ineffective in his failure to object to a comment about his Fifth Amendment right to an attorney, this claim also fails. The OCCA found such claim was procedurally barred, because [Mr. Meek] did not raise it in his direct appeal, instead presenting it in his reply brief . . . . [T]he OCCA also found counsel was not ineffective for failing to preserve this issue, "as no error occurred."

Id. at 63–64 (quoting *Id.* at 8).

The district court then offered the following reason for conducting a merits review of Mr. Meek's "unconstitutional comment" argument:

> While Petitioner did not clearly raise the substantive issue of improper comment upon his right to an attorney on direct appeal, he vaguely raised on direct appeal an ineffective assistance of counsel claim for failing to object to this comment, despite the OCCA's finding to the contrary.

Id. at 64. Noting that "the OCCA arguably did not address the claim," the district court then proceeded to analyze it de novo—that is, to analyze Mr. Meek's "unconstitutional comment" ineffective-assistance claim. *Id.* The court concluded that "[Agent] Fielding's testimony did not violate [Mr. Meek's] Fifth Amendment rights." *Id.* at 65–66. And "[b]ecause the underlying claim is meritless," it further determined that "counsel could not have been ineffective for failing to object to the testimony" and, therefore, rejected that basis for habeas relief. *Id.* at 66.

iii. Application of De Novo Review

Mr. Meek argues here that the district court properly interpreted the import of his state-court briefing on direct appeal. Specifically, he contends that the district court properly determined that he adequately raised the "unconstitutional comment" argument in his opening brief—and that therefore the court properly applied de novo review to this component of his ineffective-assistance claim because the OCCA overlooked it and did not reach it. *See* Aplt.'s Opening Br. at 53 ("Notably, the district court found that [Mr.] Meek did raise an IAC claim on this Fifth Amendment issue on direct appeal, and that the OCCA erroneously found it procedurally barred. Thus, because the OCCA did not address the claim on the merits, the district court *properly* concluded that review of this claim is *de novo*." (first emphasis added)).

Notably, the State shares Mr. Meek's assessment of the propriety of the district court's approach. In other words, the State *agrees* with the district court's characterization that the OCCA arguably did not consider Mr. Meek's argument linking counsel's purported ineffectiveness to the purportedly unconstitutional nature of Agent Fielding's comment. *See* Aplee.'s Resp. Br. at 44–47. As such, the State proposes that our review of this claim is "de novo." *Id.* at 45; *see also id.* at 44–45 ("Because the OCCA arguably did not address the claim, the district court and this Court review the claim de novo."). Indeed, during oral argument, the State explicitly confirmed its agreement with the district court that the OCCA did not address this "unconstitutional comment" ineffective-assistance issue on the merits. Oral Arg. at 26:56–59.

The OCCA's determination that Mr. Meek failed to present his ineffective-assistance claim stemming from Agent Fielding's allegedly "unconstitutional comment" in his opening brief and, consequently, waived it—by presenting it for the first time in his reply brief—would seemingly constitute a state-court finding of procedural default. *See Spreitzer v. Schomig*, 219 F.3d 639, 646–47 (7th Cir. 2000) (concluding that petitioner procedurally defaulted habeas claim where he raised claim for the first time in a reply brief before the state supreme court and where the state supreme court, by rule, "deem[ed] arguments presented for the first time in a reply brief waived"); *see also Cone v. Bell*, 556 U.S. 449, 482–83 (2009) (Alito, J., concurring) (reasoning that the petitioner procedurally defaulted a habeas claim where he "mentioned [it] in a reply brief" in a state court that "follows the[] standard practice[]" of not considering arguments raised for the first time in reply briefs); *cf. House v. Bell*, 547 U.S. 518, 536 (2006) ("As a general rule, claims forfeited under state law may support federal habeas relief only if the prisoner demonstrates cause for the default and prejudice from the asserted error."). However, we need not definitively opine on that matter nor on the propriety of the district court premising its ruling on a contrary interpretation of Mr. Meek's briefing, which effectively disregarded any finding of procedural default that the state court may have made.

That is because, first and foremost, we ultimately conclude that—even if Mr. Meek's "unconstitutional comment" ineffective-assistance claim is properly before us and subject to de novo review—he cannot prevail. More specifically, even under de novo review, Mr. Meek has failed to demonstrate prejudice within the meaning of *Strickland* stemming from counsel's allegedly ineffective assistance in failing to object to Agent

Fielding's comment on Mr. Meek's invocation of his right to counsel. Moreover, we also consider relevant to our decisional approach the fact that the State has unequivocally and expressly endorsed the district court's methodology concerning this matter and its application of de novo review to Mr. Meek's "unconstitutional comment" ineffective-assistance argument. Irrespective of whether the State's endorsement of the district court's approach here is determinative in removing any state procedural default from the decisional calculus—a matter as to which we do not opine—its endorsement is certainly a significant, relevant factor on these facts. *Cf. McCormick v. Parker*, 821 F.3d 1240, 1245 (10th Cir. 2016) (noting that a "procedural default is an affirmative defense, and the state must either use it or lose it"); *Hooks v. Ward*, 184 F.3d 1206, 1216 (10th Cir. 1999) ("There is no doubt that 'state-court procedural default . . . is an affirmative defense,' and that the state is 'obligated to raise procedural default as a defense or lose the right to assert the defense thereafter.'" (quoting *Gray v. Netherland*, 518 U.S. 152, 165–66 (1996))). In light of these two reasons, we turn to analyze de novo the merits of Mr. Meek's "unconstitutional comment" claim.

iv. Mr. Meek Fails to Show Sufficient Prejudice

Applying the de novo standard of review, though the State argues that counsel was not deficient in failing to object because Agent Fielding's comment did not run afoul of the Fifth Amendment, we think it "easier to dispose of [this] claim on the ground of lack of sufficient prejudice" to undermine our confidence in the outcome of Mr. Meek's trial. *Strickland*, 466 U.S. at 697; *cf. Romano v. Gibson*, 239 F.3d 1156, 1181 n.12 (10th Cir. 2001) ("Although the district court did not address whether counsel's performance was

deficient, this court is free to affirm on any basis supported by the record."). Accordingly, we uphold on the basis of *Strickland* prejudice the district court's denial of habeas relief on Mr. Meek's claim that counsel performed ineffectively when he failed to object to Agent Fielding's purportedly unconstitutional comment on his invocation of counsel.

Strickland contemplates that "[s]ome errors will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect"; accordingly, we are called upon to consider the impact of the objected-to testimony. *Strickland*, 466 U.S. at 695–96. We have no difficulty assigning little intrinsic prejudice to Agent Fielding's comment. Before Agent Fielding even took the stand, Mr. Meek read excerpts of the 2003 Guardianship Hearing transcript in which he confirmed that he stopped his conversation with Agent Fielding and invoked his right to counsel. *See* Aplt.'s Supp. App., Vol. 6, at 306 ("Q: At any time when you were talking with [OSBI] did you even stop and say you wanted a lawyer? A: Yes."). Agent Fielding's allegedly erroneous testimony corroborated Mr. Meek's properly-admitted *prior* testimony, so any prejudicial impact from it was likely "trivial." *Strickland*, 466 U.S. at 696; *cf. Hanson v. Sherrod*, 797 F.3d 810, 832 (10th Cir. 2015) ("Many of our cases have refused to find prejudice when the evidence not presented would have been cumulative of the evidence the jury already heard.").

Nor, when "consider[ing] the totality of the evidence before the . . . jury," *Strickland*, 466 U.S. at 695–96, do we find Agent Fielding's comment to undermine Mr.

Meek's conviction. Of course, we have previously determined that the OCCA was not unreasonable in concluding that a rational jury could find sufficient evidence to convict Mr. Meek of murdering his wife. Though satisfaction of *Jackson*'s sufficiency-of-the-evidence standard "does not answer whether there was a reasonable probability of a different result arising from counsel's deficient performance," *Newmiller v. Raemisch*, 877 F.3d 1178, 1204 n.3 (10th Cir. 2017), in our view the *weight* of the circumstantial evidence against Mr. Meek—which we have outlined *supra*—far exceeds the "trivial" quantum of prejudice that Agent Fielding's cumulative comment could have inflicted upon Mr. Meek's trial, *Strickland*, 466 U.S. at 696. We conclude, therefore, that Mr. Meek has not demonstrated a reasonable probability that, but for counsel's actions, the result of his trial would be different. *Id.* at 694.

C. Cumulative Error

Lastly, Mr. Meek argues that the accumulation of errors substantially prejudiced him. We quote Mr. Meek's entire cumulative-error argument below:

> The OCCA held that, since no individual errors required relief, there is no accumulation of error to consider. This is incorrect.
>
> The State's circumstantial case of premeditated murder did not include the body of the alleged deceased victim, nor a confession, nor any eyewitness to a murder; [Mr.] Meek was precluded from introducing a handwritten "goodbye note" from [Ms.] Meek; the jury heard an experienced police officer testify that he thought [Mr.] Meek had something to do with the disappearance of his wife, and that [Mr. Meek] wanted to talk to a lawyer before answering any more questions about it; and the State was able to introduce a prodigious amount of hearsay statements allegedly said by [Ms.] Meek, from multiple witnesses, detailing alleged physical abuse by [Mr.]

> Meek. These errors are substantial, and together they form the basis for the conviction in this case. The cumulative effect of these errors resulted in a fundamentally unfair trial in violation of Due Process of law under the Fourteenth Amendment.

Aplt.'s Opening Br. at 56–57 (citation omitted).

We conclude that Mr. Meek's claim is waived under our briefing-waiver doctrine. However, even if we were to consider it, we would conclude that it fails. More specifically, as we will discuss *infra*, we may assume that Mr. Meek's counsel was deficient in failing to timely and properly proffer for admission the Goodbye Note and for failing to object to Agent Fielding's comment on Mr. Meek's invocation of his right to counsel. Nevertheless, Mr. Meek has not shown that these two errors, viewed collectively and through a de novo lens, had a substantial and injurious effect on the jury's verdict.

1. Legal Standard

"The cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error. The purpose of a cumulative-error analysis is to address that possibility." *United States v. Rivera*, 900 F.2d 1462, 1469 (10th Cir. 1990) (en banc). "A cumulative-error analysis aggregates all errors found to be harmless and analyzes whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determined to be harmless." *Victor Hooks II*, 689 F.3d at 1194 (quoting *Cargle v. Mullin*, 317 F.3d 1196, 1206 (10th Cir. 2003)).

Notably, as here, where a state court does "not conduct a cumulative-error analysis (much less one involving th[e] precise errors [presented on appeal]), we must perform our own *de novo*, employing the well-established standard found in *Brecht v. Abrahamson*, 507 U.S. 619 (1993)." *Grant*, 886 F.3d at 955; *see also Littlejohn v. Royal* ("*Littlejohn II*"), 875 F.3d 548, 568 (10th Cir. 2017) (conducting a de novo cumulative-error analysis under *Brecht*, where "the cumulative-error claim advanced here differs from the claim that the OCCA confronted"); *Cargle*, 317 F.3d at 1224 ("[T]he OCCA did not recognize and address the collective errors we have before us here. Thus, we address the issue de novo under the *Brecht* standard . . . .").

Under the *Brecht* standard, we ask "whether the various errors we have identified collectively 'had [a] substantial and injurious effect or influence in determining the jury's'" verdict. *Cargle*, 317 F.3d at 1224 (quoting *Brecht*, 507 U.S. at 637). As we explained in *Littlejohn II*, "[a]n error may be deemed to have a substantial and injurious effect under *Brecht*'s rubric when a 'conscientious judge [is left] in grave doubt about the likely effect of an error on the jury's verdict.'" 875 F.3d at 568 (alterations original) (quoting *O'Neal v. McAninch*, 513 U.S. 432, 435 (1995)).

2. Analysis

In keeping with these principles, we would ordinarily review the OCCA's decision as to this claim *de novo* because it did not conduct a cumulative error analysis in light of its finding that there were "no individual errors" and "no accumulation of error to consider." Aplt.'s App. at 8 (emphasis added); *see Grant*, 886 F.3d at 955. However, we find that Mr. Meek's argument is waived under our briefing-waiver doctrine. But even if

it were not, we would harbor no grave doubt about the likely effect on the verdict of the two assumed errors—*viz.*, that Mr. Meek's counsel was deficient in failing to timely and properly proffer for admission the Goodbye Note and in failing to object to Agent Fielding's comment on Mr. Meek's invocation of his right to counsel. As such, we uphold the district court's denial of relief as to this final claim.

a. Mr. Meek Waived His Cumulative-Error Argument Under Our Briefing-Waiver Doctrine

Mr. Meek waived his cumulative-error argument under our briefing-waiver doctrine. "We routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief." *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007). And we cannot "make arguments for" an appellant. *Yelloweagle*, 643 F.3d at 1284. Instead, it is the appellant's "first task . . . to explain to us why the district court's decision was wrong." *Nixon*, 784 F.3d at 1366. In doing so, the appellant "must" support his "argument" with "citations to the authorities and parts of the record on which the appellant relies." FED. R. APP. P. 28(a)(8)(A). "Stray sentences" in a brief unaccompanied by citations "to any authority that even remotely supports the argument," plainly, does not suffice. *United States v. Lamirand*, 669 F.3d 1091, 1099 n.7 (10th Cir. 2012).

Mr. Meek's cumulative-error argument flouts these cardinal rules of appellate briefing. First, his block of text reflects nothing more than the same assembly of sentences urging cumulative error that he employed in district court. *See* Br. in Support of Pet. for Writ of Habeas Corpus, *Meek v. McCollum*, No. 6:16-CV-00543-RAW-KEW (E.D. Okla. Feb. 13, 2017), ECF No. 9 at 45–46. It is axiomatic that presenting the exact

same "argument" that the district court rejected, *without more*, falls short of "explain[ing] to us why the district court's decision was wrong." *Nixon*, 784 F.3d at 1366. Compounding matters, under both the Federal Rules and *Lamirand*, an appellant ordinarily must present at least *some* authority that "remotely supports [his] argument." *Lamirand*, 669 F.3d at 1099 n.7; *see* FED. R. APP. P. 28(a)(8)(A) (providing that "the argument . . . must contain" "citations to the authorities and parts of the record on which the appellant relies"). Mr. Meek fails to cite any authority at all. And it is not our job to find the authority, assess its application to the unique facts of his case, and then "make [that] argument[] for him." *Yelloweagle*, 643 F.3d at 1284. But that is exactly what would be required of us to adequately assess Mr. Meek's argument. Standing on principle, as an initial matter, we decline this undertaking. Accordingly, we hold that Mr. Meek has waived his cumulative-error argument under our briefing-waiver doctrine. As such, we are well within our discretion not to consider Mr. Meek's cumulative-error claim further. *See Bronson*, 500 F.3d at 1104. However, lest there be any question regarding the propriety of the district court's denial of Mr. Meek's request for habeas relief—and we submit that there should not be any such question—we exercise our discretion to assess (as best we can under the circumstances) the merits of Mr. Meek's cumulative-error argument.

b. Though Waived, Mr. Meek's Cumulative-Error Argument Fails on the Merits

Based on this merits assessment, we harbor no "grave doubt" as to the integrity of the "jury's verdict." *McAninch*, 513 U.S. at 435. Having rejected his sufficiency-of-the-evidence challenge and determined that the OCCA reasonably concluded that counsel

strategically acquiesced to the introduction of hearsay evidence, there are, at most, two errors whose cumulative impact we would assess through a *de novo* lens in this case: that Mr. Meek's counsel was deficient in (1) failing to timely and properly proffer for admission the Goodbye Note and (2) in failing to object to Agent Fielding's comment on Mr. Meek's invocation of his right to counsel. More specifically, though we concluded, *supra*, that these deficiencies did not prejudice Mr. Meek under *Strickland*, "we have effectively assumed that counsel's performance was constitutionally deficient" and are, therefore, "obliged to assess these two assumed errors in a cumulative-error analysis." *Grant*, 886 F.3d at 955. And we conduct that analysis through a *de novo* lens because the "OCCA did not conduct a cumulative-error analysis (much less one involving these precise errors)." *Id*. On the merits, we conclude that these errors did not have "a substantial and injurious effect" on the jury's verdict in Mr. Meek's case. *Littlejohn II*, 875 F.3d at 568.

For starters, both errors are of modest dimension. Consider first counsel's failure to timely and properly proffer for admission the Goodbye Note. Whether this assumed error was particularly harmful to Mr. Meek is not a difficult question to answer: for reasons stated in our analysis in Part IV.B.2.a., it was not. Specifically, it borders on implausible that the jury would have credited the Goodbye Note under the unique circumstances of Mr. Meek's case. That is, a jury was unlikely to be swayed by, as the state court aptly put it, an unsigned, undated "document that the Defense sa[id] [was] extremely important [but] remain[ed] secret for eleven plus years until . . . days after the State rest[ed]," especially in light of the fact that the police failed to find the note during

their search of the Meek residence and Mr. Meek failed to speak of it during the 2003 Guardianship Hearing. Aplt.'s Supp. App., Vol. 8, at 982–83.

As for counsel's failure to object to Agent Fielding's comment (i.e., Mr. Meek's purported "unconstitutional comment" ineffective-assistance claim), any prejudice resulting from this assumed error is also slight given the isolated character of Agent Fielding's remark. We note that the prosecution never again referenced Mr. Meek's invocation of counsel. *Cf. Cargle*, 317 F.3d at 1221 (finding cumulative error where errors were "not isolated," "insular," or "scattered randomly throughout the proceedings," but, instead, "synergistic" and "critical" to the State's prosecution). Furthermore, Mr. Meek declines to address—let alone expressly acknowledge—the fact that Agent Fielding's comment echoed what the jury previously heard from *Mr. Meek*'s testimony during the 2003 Guardianship Hearing. *See* Aplt.'s Supp. App., Vol. 6, at 306 ("Q: At any time when you were talking with [OSBI] did you even stop and say you wanted a lawyer? A: Yes."). As we noted in Part IV.B.2.c.iv, any prejudice attending to Agent Fielding's testimony is trivial.

Lastly, our precedent shows that we are especially disinclined to arrive at a place of grave doubt where only two or three errors of "modest prejudice" have been shown to exist. *Littlejohn II*, 875 F.3d at 570; *see id.* ("From a purely additive or sum-of-the-parts perspective, the three dashes of modest prejudice that we have assumed here . . . hardly constitute, in the aggregate, a recipe for the kind of prejudice that would render Mr. Littlejohn's resentencing proceeding fundamentally unfair or cause us to have grave doubts about whether the errors affected the jurors' verdict . . . ."); *see also Grant*,

886 F.3d at 956 (noting that *Littlejohn II*'s "logic applie[d] with even greater force [in that case], where we . . . collectively assess[ed] the modest prejudicial effect of only *two* errors, not three"). To be sure, as we recognized in *Grant* (and *Cargle*), "harmless individual errors may possess 'an inherent synergistic effect,' . . . such that the errors may be 'collectively more potent than the sum of their parts.'" *Grant*, 886 F.3d at 956 (first quoting *Cargle*, 317 F.3d at 1221; and then quoting *Littlejohn II*, 875 F.3d at 571). But, just as in *Grant*, "Mr. [Meek] makes no argument that the two errors that we have assumed here possess any particularized synergies" and, "[t]herefore, th[e] synergy principle . . . does not avail Mr. [Meek]." *Id.* (quotations omitted).

In sum, we cannot conclude that, viewed collectively, the two ineffective-assistance errors that we have assumed here—relating first to counsel's failure to timely and properly proffer for admission the Goodbye Note and, second, to counsel's failure to object to Agent Fielding's comment on Mr. Meek's invocation of his constitutional right to counsel—had a substantial and injurious effect on the jury's consideration of Mr. Meek's case. More specifically, we are not in grave doubt about the likely effects of these errors (in the aggregate) on the jury's verdict. Accordingly, we uphold the district court's denial of this final aspect of Mr. Meek's petition.

V. CONCLUSION

In sum, for the reasons explicated above, we **AFFIRM** the district court's decision denying Mr. Meek's § 2254 petition for a writ of habeas corpus.