[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-12292

Non-Argument Calendar

BRIAN T. TUCK,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:21-cv-00232-SPC-NPM

Before NEWSOM, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Brian Tuck appeals the district court's order denying his 28 U.S.C. § 2254 petition. Tuck was granted a certificate of appealability on one issue: Whether the district court erred in concluding that the state post-conviction court reasonably denied Tuck's claim that his trial counsel performed ineffectively by failing to investigate and present Tuck's theory of defense and by failing to properly challenge the State's motion in limine related to that theory of defense. For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Tuck inserted his fingers and tongue into the vagina of V.C., a child under the age of twelve. And he enticed V.C. to touch his genital area. As a result, the State charged Tuck with sexual battery of a child less than 12 years of age, in violation of Florida Statute § 794.011(2) ("Count 1"), and lewd or lascivious molestation, in violation of Florida Statute § 800.04(5)(b) ("Count 2").

Prior to trial, the State filed a motion in limine seeking to exclude eight pieces of evidence, including "[a]ny reference regarding a prior incident involving the Victim and her cousin . . . in which they were running bath water down their legs." On the first day of the trial, in May 2012, the State raised its motion in limine before the court. Tuck's counsel, David Agoston, objected to the motion, arguing that it contained no legal authority and was thus legally deficient. The trial court, however, sided with the State,

and Agoston agreed to "stay away from" the eight pieces of evidence listed in the State's motion.

During jury selection, Agoston explained to the potential jurors that, among other things, the State had to prove "that the crime was committed; that this poor little girl was sexually and lewdly abused." Agoston said that he "suspect[ed] she wasn't," but that his "vote doesn't count for anything." The State objected to the comment, which the trial court sustained. Then, during his opening statement, Agoston stated that "this is a very serious charge," and that "in all likelihood, [V.C.] was sexually abused." Pressing a reasonable-doubt theory, Agoston also stated that "this little girl was sexually abused at some point by someone. I don't know folks. I wasn't there. Maybe [Tuck] did. The question today is: What evidence is presented to you folks that [Tuck] did, as opposed to anyone else?" Agoston also highlighted problems in the romantic relationship between Tuck and V.C.'s mother. Agoston said that the start of their relationship issues came "surprisingly close to these allegations surfacing." He suggested that after lots of "drinking," "not working," "no money," and "standard household expenses," V.C.'s mother "had it with [Tuck] and got rid of him."

V.C., nine years' old at the time of trial, testified as follows. Tuck had been her mom's boyfriend and had lived with them. When she was five or six, Tuck sexually abused her by touching her "[p]rivates" with his fingers and tongue. He would come into her room while she was sleeping to "[t]ouch [her] privates." Tuck

touched her multiple times with his fingers and once with his tongue. And Tuck told her not to tell anybody. V.C., however, told her mom about it when she fell down on a trampoline and got a bruise on her "private." Her mom asked her, "[w]hy is it red," and that is when she told her. V.C. said that she had not informed her mother earlier because Tuck instructed her not to and told her that "it's not wrong." On cross-examination, Agoston asked V.C. whether any of her cousins had ever touched her, and V.C. responded that they had not.

V.C.'s mother then testified as follows. Tuck moved in with her and her children in 2005. Her son was five and V.C. was three or four. V.C.'s mother said that her romantic relationship with Tuck was "turbulent at times" and "[v]ery, very rocky" in December 2010. Right around that time, in late December 2010, V.C. showed her a bruise on the inside of her leg. She asked V.C. where she got the bruise from, but V.C. could not remember. She thought that V.C. "looked different," was "acting different," and "looked uncomfortable." V.C.'s mother "got a weird feeling," so she asked V.C. if anybody had been touching her. V.C. then froze and told her, "[y]ou have to promise you're not going to get mad at [Tuck]." V.C. told her that Tuck had "flick[ed]" and "rub[bed] on" "her privates." V.C. also said that Tuck had given her "night-night kisses on her privates," and asked her to give him "night-night kisses on his private," but she said no, and he did not force her. She asked V.C. "what it looked like," and V.C. told her that "it was long, it had a hole in the end, and it was like a ball hanging from --

something hanging from the bottom." V.C. was eight years' old when she disclosed this to her mother.

V.C.'s mother testified that Tuck subsequently left the house. She later talked with Tuck on the phone, and, when she asked him about what had happened, he said that "he was feeling guilty about . . . drinking so much," and that he could not "believe [he] could have done something like that." She remembered that she had previously caught Tuck in the children's room at night usually when he had had a lot to drink, and when she would ask him what he was doing there, he would tell her that the kids were talking in their sleep or that "he was turning the alarm clock off or he heard something." She did not remember exactly how many times she had caught him in the children's room, but she thought that it was maybe twenty times.

On cross-examination, V.C.'s mother testified that she had asked V.C. if someone had touched her after inspecting the bruise because V.C. had been acting nervous and "[h]er private was red." In response to the question of why V.C.'s "private" had been red, V.C.'s mother stated that she did not know, but believed it was because Tuck had molested V.C. Agoston then asked if she had any evidence to support that belief other than intuition, but the State objected, and the trial court sustained the objection.

V.C.'s grandmother also testified. Like V.C.'s mother, she testified that V.C. told her that Tuck was "touching [her] in private places," and giving her "night-night kisses" "in her privates." V.C. told her grandmother that Tuck had touched her "[s]ince she was

in kindergarten" and she also mentioned rejecting Tuck's request to touch his penis. On cross-examination, V.C.'s grandmother stated that Tuck and V.C.'s mother would sometimes argue after drinking. She also said that V.C.'s mother lost her job at a restaurant and that Tuck was "unemployed off and on."

Additionally, Susan Foster, a pediatric nurse for the Children's Advocacy Center as part of the Child Protection Team, testified that she had examined V.C. in December 2010. She stated that she had not expected to find any evidence of V.C.'s sexual allegations because the sorts of activities alleged, touching and licking, "generally d[id] not leave any residual abnormal findings." She did, however, see a bruise on V.C.'s genital area, which she had expected to find based on the independent statements of V.C. and her mother that she had received it while playing on a trampoline. She then confirmed on cross-examination that she had not noticed any physical evidence regarding the allegation of sexual abuse.

Erica Burda, a former case coordinator for the Child Advocacy Center, testified. Burda interviewed V.C. in December 2010. The interview was videotaped. During the interview, V.C. disclosed that she had been touched in her vaginal area by Tuck with his hand and tongue. The State then submitted the recorded interview and published it to the jury. On cross-examination, Agoston asked Burda whether anybody involved in the investigation had asked V.C.'s brother if he had been the one who had sexually abused her. Burda responded that nobody had asked him that.

V.C.'s brother also testified. He said that he and V.C. slept on a bunk bed and that he never saw Tuck come into their bedroom other than when he did to say goodnight. V.C.'s brother denied ever touching V.C.'s private parts. On cross-examination, V.C.'s brother stated that his cousins would sometimes stay over at his house and that they all would sometimes stay at his grandmother's home. He also said that he never had any indication that V.C. had been abused or hurt before these allegations came to light.

Two witnesses testified for the defense. First, Dean Tong, a forensic trial consultant and expert witness in cases concerning the alleged sexual abuse of children, testified that interviewers in Florida are allowed to use leading and suggestive questions, which could result in "putting words in the mind of the child." Tong testified that other jurisdictions use more accurate methodologies when interviewing children.

Tuck then testified in his defense. He said that he had been laid off about a week before Christmas in 2010. He stated that he and V.C.'s mother had been fighting about Christmas presents, and she had been aggravated that he had lost his job. As for the allegations, Tuck stated that he had never touched V.C. or any child sexually. On cross-examination, he denied that he had ever told V.C.'s mother that "[he] can't believe [he] would do something like that."

During its closing argument, the State pointed out that Agoston had asked throughout the trial "how do we know this is [Tuck]?" It noted that Agoston had first suggested that one of

V.C.'s cousins could have been the one to have abused her, then he had suggested that it had been her brother. However, the State explained that V.C. had consistently said that it was Tuck who had abused her.

During his closing argument, Agoston stated that "[a] lot has just been made about the changing theories and approaches to the defense in this case. The truth of the matter is, I don't have one. I don't count. I don't get a vote or an opinion." This led into his reasonable-doubt argument. Agoston argued that the witnesses who testified were "not seeing the same things, not hearing the same things, [and] not feeling the same things." What made the case difficult, Agoston posited, was that "[n]one of us where there," and Agoston reminded the jury that if they could not "get to the truth of the matter of [the] case, then the State hasn't proven it beyond a reasonable doubt." If the jury was "vacillating around," and did not "have an abiding conviction of guilt," then Agoston told them that they had a reasonable doubt. He asserted that law enforcement had been "clumsy, haphazard, [and] incomplete" during the investigation, stating that they had not asked questions, but had "asked answers."

As to whether V.C. was telling the truth, Agoston stated, "I don't believe she's a wholehearted liar." But Agoston then theorized that V.C.'s mother may have persuaded her to implicate Tuck. He asked the jury to consider "[w]hether or not it's within the realm of the possible for [her mother] to get rid of this loser with the perfect misunderstanding of what exactly a bruise in the

groin area is." Later, as to whether V.C. had been abused, he said that he personally thought that it "looks like she was." But the question for the jury, Agoston said, was "whether or not [Tuck] did it, someone else did it, the brother did it, cousin did it, or no, it never happened." He then asked the jury: "Do you know? Did they prove it? Was the question even investigated?"

During its deliberations, the jurors requested to see the video of V.C.'s interview with Burda again. Ultimately, the jury found Tuck guilty of both counts. The trial court sentenced Tuck to life imprisonment without parole for both counts, to run concurrently. On appeal, Florida's Second District Court of Appeal affirmed without an opinion. *Tuck v. State*, 156 So. 3d 1096, 2014 WL 5419978 (Fla. Dist. Ct. App. 2014) (unpublished table decision).

Tuck then filed a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. In that motion, he argued that his trial counsel was ineffective because he had failed to investigate and present Tuck's theory of defense at trial, specifically, that V.C. had fabricated the allegations against him to avoid punishment from her mother for masturbating. He also argued that his trial counsel was ineffective for failing to properly challenge the State's motion in limine because the evidence relating to an incident involving V.C. and her cousin "in which they were running bath water down their legs" could have been used to impeach V.C. and to provide a motive as to why she had fabricated the allegations against him.

The post-conviction court permitted Tuck to present evidence as to these two claims at an evidentiary hearing. At the evidentiary hearing, Agoston testified as follows. In the period before the trial, Agoston met with Tuck and communicated with Tuck's family, particularly his mom. Through these conversations, Agoston developed "the core of the defense" that, when Tuck lost his job, "his usefulness ran out," and V.C.'s mother pressured V.C. into making the allegations. He did not have any specific memory of Tuck or his family members communicating anything "about VC masturbating or sexual acts that could be a motive." However, he also said that it was his understanding that V.C.'s mother would discipline and yell at V.C. when she had been caught masturbating. While Agoston did not have a distinct recollection of Tuck bringing that fact up to him, he vaguely said that it would be consistent with "the characteristics of the defense in its entirety." And Agoston agreed that V.C.'s fear of punishment would be an "excellent motive to fabricate a story."

On cross-examination, Agoston was asked about the State's motion in limine. In response to whether he had been surprised by the motion, Agoston stated

> I couldn't believe my eyes when it was handed to me, and I was even more surprised that it was granted. I was just truly thunderstruck by, um, what a broad brush it was painted with and the fact that there was not one single cite to any legal authority whatsoever on it. I just wasn't expecting - you always expect a motion in limine. I wasn't expecting that thing.

But he had appeared before the trial judge many times and knew that the judge was "very strict," and that he did not have any chance of getting the judge to overturn the grant of the motion. Rather, he thought that further argument would have been "overtly counterproductive."

Next, Tuck testified that he had had discussions with Agoston before trial in which he informed Agoston that V.C. "had a habit of masturbating with the bathtub faucet" by "let[ting] the water run on her privates." V.C.'s mother knew about this and "would be very upset," which resulted in V.C. "get[ting] in . . . deep trouble." Specifically, "she would get a pretty severe spanking." Tuck thought that this was important as a possible motive for falsehood because he saw that the allegations had come about because V.C.'s "privates were red," and he remembered that, when her mother would catch V.C. masturbating and spank her, she would say "look how red it is."

Tuck's mother also testified that she had emailed Agoston to give him information about why V.C. "would say such a thing." Tuck submitted copies of those emails into evidence.

The post-conviction court ultimately denied Tuck's post-conviction motion on all grounds. It found that Tuck failed to meet his burden under *Strickland v. Washington*, 466 U.S. 668 (1984), as to both of his ineffective-assistance claims.

On the ineffective-assistance claim related to Agoston's failure to raise the masturbation theory of defense, the post-conviction court concluded that Agoston's performance had not been

deficient, noting that, because the trial court had granted the State's motion in limine, Agoston had been precluded from presenting the evidence raised by Tuck. The court also stated that there was no reasonable probability of a different outcome because the jury viewed V.C.'s recorded interview and her testimony at trial, which were consistent. The post-conviction court reasoned that "[g]iven the victim's very young age, it defies belief that she could maintain a consistent story to her mother, the police, [Child Protection Team], and at trial, if she was fabricating or had been coached." For that reason, it found that sufficient evidence had been presented to the jury for it to find Tuck guilty, even if his asserted allegation regarding V.C. had been raised.

On the ineffective-assistance claim based on Tuck's failure to adequately oppose the State's motion in limine, the post-conviction court noted that Agoston had testified that "he had no option to make additional arguments once the trial court ruled because the trial judge was strict, and continuing to argue would have been counterproductive." It concluded that Agoston's performance had not been deficient because "[c]ounsel cannot be ineffective for failing to prevail on an issue raised and rejected by the court."

Tuck appealed and the Second District Court of Appeal affirmed without an opinion. *Tuck v. State*, 321 So. 3d 176, 2020 WL 6866559 (Fla. Dist. Ct. App. 2020) (unpublished table decision).

In March 2021, Tuck, filed the instant § 2254 petition, challenging his convictions and sentence. Tuck raised multiple grounds for relief, the first of which was that his counsel was

ineffective "by failing to investigate and present [his] theory of defense at trial and by failing to properly challenge the State's motion in limine." Tuck also filed a motion to expand the record, which the district court granted. Tuck submitted exhibits that had been introduced during the state post-conviction proceedings, but which had not been included in the record submitted to the district court by the Secretary. These included an email sent from Tuck's mother to Agoston in which she stated that she had discussed the case with a potential expert witness, and the expert wanted to know if the cousin of V.C.'s mother had been interviewed. Specifically, Tuck's mother stated that the expert had said that "it would be a great benefit if [the cousin] would admit that his daughter . . . and [V.C.] bathed together when she spent the night there," as "[a]fterward [V.C.] was caught allowing water to run over her genital area." Tuck also submitted the transcript of V.C.'s mother's deposition, where she recounts V.C. telling her that the water from the bathtub faucet ran "down her private area" and that V.C. learned about this while bathing with a cousin.

The district court ultimately denied Tuck's habeas petition. With respect to Tuck's ineffective-assistance claim, the district court concluded that Tuck failed to meet both the deficient performance and prejudice prongs. The district court also denied Tuck a certificate of appealability ("COA"). Tuck then filed a motion for a COA in this Court, which this Court granted only on the issue of "[w]hether the district court erred in concluding that the state court reasonably had denied Tuck's claim that his trial counsel performed ineffectively by failing to investigate and present his theory

of defense and by failing to properly challenge the state's motion *in limine*."

II. STANDARDS OF REVIEW

When examining a district court's denial of a § 2254 petition, "we review questions of law and mixed questions of law and fact *de novo*, and findings of fact for clear error." *Grossman v. McDonough*, 466 F.3d 1325, 1335 (11th Cir. 2006). "An ineffective assistance of counsel claim is a mixed question of law and fact subject to *de novo* review." *McNair v. Campbell,* 416 F.3d 1291, 1297 (11th Cir. 2005).

Under § 2254, when a state prisoner challenges a state court's adjudication of a claim, federal courts must afford substantial deference to the state-court decision being challenged and may grant relief only if the state court's decision was contrary to clearly established federal law, was an unreasonable application of clearly established federal law, or involved an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(1)-(2). Under the "unreasonable application" clause, a federal court may grant relief only "if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Jones v. GDCP Warden*, 753 F.3d 1171, 1182 (11th Cir. 2014) (alteration in the original) (quoting *Williams v. Taylor*, 529 U.S. 362, 413 (2000)). To meet this standard, the state prisoner "must show that the state court's decision is so obviously wrong that its error lies 'beyond any possibility for

fairminded disagreement.'" *Shinn v. Kayer*, 592 U.S. 111, 118 (2020) (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)).

III. ANALYSIS

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to effective assistance of counsel. *Strickland*, 466 U.S. at 684–86. To obtain relief based on an ineffective-assistance claim, a defendant must show (1) "that counsel's performance was deficient," and (2) "that the deficient performance prejudiced the defense." *Id.* at 687.

To meet the deficiency prong, "the defendant must show that counsel's representation fell below an objective standard of reasonableness" based on "prevailing professional norms." *Id.* at 688. "Judicial scrutiny of counsel's performance must be highly deferential," which means that courts "must 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.'" *Id.* at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). "A fair assessment of attorney performance requires that every effort be made 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.* "The test has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer at the trial could have acted,

in the circumstances, as defense counsel acted at trial." *White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992).

Section 2254(d) also provides an "extra layer of deference." *Johnson v. Sec'y, DOC*, 643 F.3d 907, 911 (11th Cir. 2011). When § 2254(d) applies, "the question is not whether counsel's actions were reasonable," but "whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Harrington*, 562 U.S. at 105.

To meet the prejudice prong, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* When, as here, "a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Id.* at 695. "[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." *Id.* at 696.[1]

On appeal, Tuck argues that the district court erred by denying his ineffective-assistance claim because the state post-conviction court unreasonably applied *Strickland* when it found Agoston

[1] At times, we have said that, like with the deficiency prong, the state court's decision on the prejudice prong is also due double deference. *See Jenkins v. Comm'r, Ala. Dep't of Corr.*, 963 F.3d 1248, 1271 (11th Cir. 2020); *see also Cullen v. Pinholster*, 563 U.S. 170, 202 (2011).

was not deficient for: (1) failing to raise the defense theory that V.C. had fabricated her allegations that Tuck had sexually abused her in order to avoid punishment for masturbation and (2) failing to adequately oppose the State's motion in limine seeking to preclude reference to V.C.'s alleged masturbation habits. He also argues that the state post-conviction court unreasonably applied *Strickland* when it found that Tuck was not prejudiced by any of Agoston's alleged deficiencies.

We start with *Strickland*'s deficiency prong and Tuck's argument that Agoston's performance was deficient because he failed to present the masturbation theory of defense. The state post-conviction court reasoned that Agoston's performance was not deficient because the trial court precluded Agoston from raising the defense by granting the motion in limine.[2] But this Court is not required "to strictly limit [its] review to the particular justifications that the state court provided." *Pye v. Warden, Georgia Diagnostic Prison*, 50 F.4th 1025, 1036 (11th Cir. 2022) (en banc) (emphasis removed). Instead, "having determined the *reasons* for the state court's decision, we may consider any potential *justification* for those reasons." *Id.* (emphasis in the original). In other words, we may "consider additional rationales that support the state court's [deficiency] determination." *Id.*

[2] Because the state appellate court did not issue a written opinion, we must "look through" that decision and presume that the appellate court adopted the trial court's reasoning. *See Wilson v. Sellers*, 584 U.S. 122, 125 (2018).

Tuck's claim rises and falls with the arguments that the masturbation theory was Tuck's only viable defense and that a reasonable attorney would not have presented other defenses instead. But these contentions are not supported by the record. Instead, the record shows that other viable theories existed, and that Agoston reasonably decided to present them instead of the masturbation theory. Agoston testified at the state post-conviction hearing that, with the help of Tuck, his family, and an investigator, he developed the theory that V.C.'s mother had pressured V.C. into making the allegations against Tuck because he had lost his job. Agoston mentioned this theory in his opening statement, when he said that "the economy caught up" with Tuck and V.C.'s mother "surprisingly close to these allegations surfacing." He also suggested that after lots of "drinking," "not working," "no money," and "standard household expenses," V.C.'s mother "had it with [Tuck] and got rid of him." Agoston established the factual basis for this theory in his direct examination of Tuck. Both V.C.'s mother and V.C.'s grandmother also testified to issues between Tuck and V.C.'s mother. Agoston then raised this theory in his closing by arguing that while he did not believe that V.C. was a "wholehearted liar," it may be within the realm of possibilities for V.C.'s mother to "get rid" of Tuck by using the bruise in V.C.'s groin area. This theory—which is at odds with the theory that V.C. lied to escape her mother's punishment—was part of Agoston's overall argument, which was focused on reasonable doubt.

A reasonable lawyer could have concluded that this was a better approach than to directly accuse V.C., an eight-year-old child

whose multiple statements regarding the abuse were consistent, of lying to hide the fact that she was masturbating. As the Secretary argues, aside from asking the jury to believe that V.C. had been masturbating, this theory of defense would have required the jury to believe that V.C., an eight-year-old girl, concocted a somewhat detailed story of sexual abuse to escape punishment. The decision to forgo this potential defense was "sound trial strategy." *Michel*, 350 U.S. at 101.

For all these reasons, we cannot conclude that the state post-conviction court's conclusion that Agoston was not deficient for failing to present the masturbation theory of defense was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement." *Harrington*, 562 U.S. at 103. Thus, we conclude that Tuck failed to meet his burden under § 2254(d)(1) and the district court correctly rejected his argument.

The same is true of the state post-conviction court's decision on the deficiency prong of Tuck's ineffective-assistance claim based on Agoston's response to the State's motion in limine. The state post-conviction court's decision was based on the conclusion that counsel "cannot be ineffective for failing to prevail on an issue raised and rejected by the court." Like with Tuck's first deficiency argument, we are not tethered to this justification. *See Pye*, 50 F.4th at 1036. It was entirely reasonable for Agoston not to raise any additional arguments in opposition to the motion in limine after the state trial court ruled in the State's favor. This is especially true

given that, based on his past experience with that same trial judge, Agoston feared that further argument might be "overtly counter-productive."

We have "long held that the fact that a particular defense was unsuccessful does not prove ineffective assistance of counsel." *Ward v. Hall*, 592 F.3d 1144, 1164 (11th Cir. 2010). "Moreover, 'counsel cannot be adjudged incompetent for performing in a particular way in a case, as long as the approach taken might be considered sound trial strategy.'" *Id.* (quoting *Chandler v. United States*, 218 F.3d 1305, 1314 (11th Cir. 2000)). The Supreme Court has stated that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466 U.S. at 690.

To meet the prejudice prong, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. "When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Id.* at 695. "[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." *Id.* at 696.

We thus conclude that Tuck has failed to show that the state post-conviction court unreasonably applied *Strickland* by

determining that Tuck did not establish that Agoston's performance was deficient in litigating the motion in limine.

IV. CONCLUSION

Based on the foregoing, we conclude that the state post-conviction court did not unreasonably apply *Strickland* when it determined that Tuck's trial attorney was not deficient and that Tuck was not prejudiced by any of his attorney's alleged deficiencies. We thus affirm the district court's denial of Tuck's § 2254 habeas petition.

AFFIRMED.