

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-9000

JOHN JOSEPH KOEHLER,
Appellant

v.

SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS;
SUPERINTENDENT GREENE SCI; SUPERINTENDENT ROCKVIEW SCI

On Appeal from the U.S. District Court, M.D. Pa.
Judge Jennifer P. Wilson, No. 3:12-cv-00291

Before: SHWARTZ, KRAUSE, AND MCKEE, Circuit Judges
Submitted: Aug. 24, 2026; Filed: August 27, 2026

NONPRECEDENTIAL OPINION*

SHWARTZ, Circuit Judge.

John Joseph Koehler was convicted of two counts of first-degree murder and sentenced to death in April 1996 and now appeals the District Court's order denying his petition for a writ of habeas corpus under 28 U.S.C. § 2254. Because his claim under Brady v. Maryland, 373 U.S. 83 (1963), lacks merit, we will affirm.

I

A

Koehler described himself to others as a hit man for the CIA and the mafia. He told his acquaintance, William Curley, that he would train Curley to become a hit man, too.

On April 17, 1995, Koehler called Curley to tell him that he was bringing two “packages” for Curley to “deliver.” D.C. Dkt. No. 51 at 35-36 (Koehler Trial 3/28/96 AM Tr. at 32:7-33:1). Early the next morning, Koehler appeared with Regina Clark and her son, Austin Hopper, at the Pennsylvania residence where Curley was staying. The trio had driven from Arkansas to Pennsylvania en route to New Jersey. Koehler told his acquaintance Kerrien Ramsey that he wanted to kill Clark and Hopper, and he told Curley that he wanted Curley to kill Clark. Koehler gave Curley a gun and threatened to kill Curley if he did not kill Clark.

Eventually, Koehler and Curley brought Clark and Hopper to the residence of Kirk Schrader, a friend of Curley’s. There, Curley shot Clark three times in Schrader’s presence. Clark did not immediately die. After Curley put Clark in the trunk of his car, Koehler found that Clark still had a pulse.

Curley then drove the car with Schrader en route to a dump. During the ride, they heard thumping sounds from the trunk. Before arriving at the dump, Curley dropped Schrader off at an acquaintance’s house. Curley continued to the dump, where he placed Clark into a refrigerator and used a knife to make cuts on her throat. When Curley returned to Schrader’s residence, Koehler told him that he had to kill Hopper because the child was a “loose link.” D.C. Dkt. No. 51-1 at 63-64 (Koehler Trial 3/28/96 AM Tr. at 102-03). Curley then killed Hopper in Schrader’s garage and hid the body in a nearby sluice pipe.

A Pennsylvania Department of Transportation employee found Clark’s body in the refrigerator, and her clothing description was publicized. The person at whose residence

Curley was staying recognized the description of the woman's clothes and called the police, leading them to Curley. Ultimately, Curley confessed and described the roles of Koehler and Schrader.

Curley and Koehler were both charged with, among other crimes, two counts of first-degree murder, a capital offense in Pennsylvania. At Koehler's trial, Curley testified for the prosecution with the understanding that doing so would be considered a mitigating circumstance at his own trial. Schrader also testified for the prosecution though he was not charged for his involvement in the killings until after Koehler's trial.

The circumstances surrounding Schrader's decision to testify on behalf of the Commonwealth and its subsequent efforts to prosecute him are the bases for Koehler's Brady claim. Koehler contends that Schrader received immunity from prosecution, but Schrader and Robert Fleury, the Bradford County District Attorney at the time of the murder investigation, both testified at Koehler's trial that he did not have immunity. Pennsylvania State Trooper Nicholas Madigan, however, testified about notes he made during a May 5, 1995 investigative interview with Schrader indicating that DA Fleury told Schrader he would not be prosecuted for his involvement in the murders

Koehler was convicted of two counts of first-degree murder, among other charges, and sentenced to death in April 1996. Koehler appealed to the Pennsylvania Supreme Court. Commonwealth v. Koehler, 737 A.2d 225 (Pa. 1999) ("Koehler I"). He raised a host of issues but did not assert a Brady claim based on an alleged failure to disclose that Schrader purportedly had a non-prosecution agreement. Id. at 234-45. The Pennsylvania Supreme Court affirmed the verdict and death sentence. Id. at 245-46. The United States

Supreme Court denied Koehler's petition for a writ of certiorari. Koehler v. Pennsylvania, 531 U.S. 829 (2000).

After Koehler's trial but before the Pennsylvania Supreme Court resolved his direct appeal, the Commonwealth charged Schrader for his involvement in the murders. Schrader moved to dismiss the charges, claiming that he received a non-prosecution agreement. Although there was no written non-prosecution agreement between the Commonwealth and Schrader, the trial court (Judge Jeffrey A. Smith) determined that, during Schrader's May 5, 1995 interview, DA Fleury offered Schrader immunity in exchange for cooperating. Judge Smith reached this conclusion after hearing testimony from DA Fleury and Schrader's defense counsel, W. Marshall Dawsey. Judge Smith credited Dawsey's testimony that DA Fleury promised Schrader he would not be prosecuted in exchange for cooperating against Koehler. Because Judge Smith determined that Schrader had upheld his end of the bargain by cooperating, he dismissed the charges against Schrader.

In September 2001, Koehler filed a petition under Pennsylvania's Post-Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. § 9501, et seq., claiming that the Commonwealth violated Brady by failing to disclose Schrader's purported non-prosecution agreement. Judge Smith, sitting as the PCRA Court, rejected the Brady claim and denied the petition. Judge Smith concluded that when the police initially interviewed Schrader, he was told he would not be prosecuted if he cooperated, but, according to the PCRA testimony of Robert McGuinness, the Bradford County District Attorney during Koehler's trial, the non-prosecution agreement was revoked before

Schrader testified. Thus, viewed from Schrader’s perspective for Brady purposes, Schrader testified at trial without any promise of leniency from the Commonwealth, leaving no undisclosed agreement with which to impeach him. Judge Smith concluded that, in any event, Koehler was not prejudiced given the strong evidence of his guilt.

The Pennsylvania Supreme Court affirmed the order denying the PCRA petition. Commonwealth v. Koehler, 36 A.3d 121, 126 (Pa. 2012) (“Koehler II”). The Court accepted that there was initially a non-prosecution agreement between Schrader and the Commonwealth, id. at 136, but “ample evidence” from the trial and PCRA hearing—including Schrader’s and DA McGuinness’s testimony—showed that it had been revoked before Schrader testified, id. at 138. Because the Supreme Court determined that Schrader had no incentive to provide slanted testimony at Koehler’s trial in exchange for favorable treatment, it concluded that the repudiated non-prosecution agreement had no impeachment value. Id. Accordingly, it held that Koehler’s Brady claim based on Schrader’s non-prosecution agreement lacked merit. Id.

Koehler thereafter filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the Middle District of Pennsylvania, which the District Court denied. Koehler v. Wetzel, No. 3:12-cv-00291, 2015 WL 2344932 (M.D. Pa. May 14, 2015) (“Koehler III”). The Court agreed with the Pennsylvania Supreme Court’s determination that, because Schrader believed any non-prosecution agreement had been revoked before Koehler’s trial, there was no exculpatory or impeaching evidence in the form of a non-prosecution agreement that the Commonwealth had a duty to disclose. Id. at *23. Because Koehler proffered no evidence to the

contrary, the Court concluded that he failed to rebut the state court’s factual findings with clear and convincing evidence. Id. (citing 28 U.S.C. § 2254(e)(1)). As a result, it deferred to the state court’s determination that there was no undisclosed non-prosecution agreement. Id. (citing 28 U.S.C. § 2254(d)(1)-(2)). The District Court also found that, even if Schrader’s testimony implicated Koehler’s federal constitutional rights, any error would be harmless in light of the other evidence at trial. Id. at *25 (citing Brecht v. Abrahamson, 507 U.S. 619, 637 (1993)).

The District Court thereafter denied Koehler’s motion to alter or amend the judgment denying his habeas petition under Federal Rule of Civil Procedure 59(e). Koehler v. Wetzel, No. 3:12-cv-00291, 2024 WL 1388911, at *3-11 (M.D. Pa. Apr. 1, 2024) (“Koehler IV”). The Court rejected Koehler’s claim that the Pennsylvania Supreme Court’s determination that Schrader believed any non-prosecution agreement had been revoked before Koehler’s trial was inconsistent with Judge Smith’s finding that Schrader inculcated himself during his police interview because he was told he would not be prosecuted if he cooperated. Id. at *6. The Court explained that “[t]he purportedly inconsistent factual findings concern what Schrader believed at two different points in time.” Id. at *7. According to the Court, Judge Smith, sitting as the trial court in Schrader’s prosecution, focused on what Schrader believed before incriminating himself during his police interview, whereas Judge Smith, in assessing Koehler’s Brady claim, focused on what Schrader believed when he testified at Koehler’s trial. Id. The Court reasoned that the later effort to enforce the non-prosecution agreement in connection with

Schrader's trial did not bear on Schrader's subjective belief when he testified at Koehler's trial. Id.

Koehler appealed and we granted a certificate of appealability on whether "the disclosure of Schrader's non-prosecution agreement could have affected the judgment of the jury." App. 242-43 (citing Strickler v. Greene, 527 U.S. 263, 281-82 (1999) (describing elements of a claim based on Brady)).

II¹

A

Under AEDPA, a petition for a writ of habeas corpus will not be granted unless a state court's adjudication of the merits of a claim resulted in a decision that was (1) "contrary to,² or involved an unreasonable application of,³ clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State

¹ The District Court had jurisdiction under 28 U.S.C. §§ 2241 and 2254. We have jurisdiction under 28 U.S.C. § 1291.

² Under 28 U.S.C. § 2254(d)(1), "[a] state court decision is contrary to clearly established federal law if it applies a rule that contradicts the governing law set forth in Supreme Court precedent or if it confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a result different from that reached by the Supreme Court." Eley v. Erickson, 712 F.3d 837, 846 (3d Cir. 2013) (citations, internal quotation marks, and alterations omitted) (quoting Williams v. Taylor, 529 U.S. 362, 405-06 (2000)).

³ "A state court decision is 'an unreasonable application of' clearly established federal law if it 'correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case.'" Eley, 712 F.3d at 846 (quoting Williams, 529 U.S. at 407-08).

court proceeding.”⁴ 28 U.S.C. § 2254(d). “The [petitioner] must show that the state court’s decision is so obviously wrong that its error lies ‘beyond any possibility for fairminded disagreement.’” Laird v. Sec’y, Pa. Dep’t of Corr., 129 F.4th 227, 240 (3d Cir.) (quoting Shinn v. Kayer, 592 U.S. 111, 118 (2020)), cert. denied sub nom. Laird v. Harry, 146 S. Ct. 138 (2025).

B

In Brady v. Maryland, the United States Supreme Court held that “suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. 83, 87 (1963). “A Brady violation occurs if: (1) the evidence at issue is favorable to the accused, because [it is] either exculpatory or impeaching; (2) the prosecution withheld it; and (3) the defendant was prejudiced because the evidence was ‘material.’” Breakiron v. Horn, 642 F.3d 126, 133 (3d Cir. 2011) (citing Wilson v. Beard, 589 F.3d 651, 659 (3d Cir. 2009)).

As to the favorable-evidence element, Brady requires disclosure of both exculpatory and impeachment material. Kyles v. Whitley, 514 U.S. 419, 433 (1995).

⁴ To conclude that a state court decision was based on an “unreasonable determination of the facts” under 28 U.S.C. § 2254(d)(2), we must conclude that the state court’s factual findings were “objectively unreasonable in light of the evidence presented in the state-court proceeding.” Miller-El v. Cockrell, 537 U.S. 322, 340 (2003). “This review requires us to analyze ‘whether there was sufficient evidence to support the state court’s factual findings.’” Laird, 129 F.4th at 240 (quoting Dennis v. Sec’y, Pa. Dep’t of Corr., 834 F.3d 263, 281 (3d Cir. 2016) (en banc)). The state court’s factual findings are presumed correct, and the petitioner must rebut this presumption by clear and convincing evidence. Id. at 240-41.

“The rationale for this is clear: Such evidence is evidence favorable to an accused, so that, if disclosed and used effectively, it may make the difference between conviction and acquittal.” Wilson, 589 F.3d at 659 (internal quotation marks omitted) (quoting United States v. Bagley, 473 U.S. 667, 676 (1985)).

As for the materiality element, “evidence is ‘material’ within the meaning of Brady when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” Smith v. Cain, 565 U.S. 73, 75 (2012) (quoting Cone v. Bell, 556 U.S. 449, 469-70 (2009)). “A reasonable probability does not mean that the defendant ‘would more likely than not have received a different verdict with the evidence,’ only that the likelihood of a different result is great enough to ‘undermine[] confidence in the outcome of the trial.’” Id. (alteration in original) (quoting Kyles, 514 U.S. at 434).

C

The Pennsylvania Supreme Court’s finding that Schrader’s non-prosecution agreement had been revoked when he testified was not “objectively unreasonable in light of the evidence presented in the state-court proceeding.” Miller-El, 537 U.S. at 340. The court reached this conclusion based on: (1) Schrader’s testimony at Koehler’s trial that he did not receive promises of leniency from the Commonwealth in exchange for testifying; (2) the Commonwealth’s statement in closing that it did not offer Schrader immunity; and (3) Judge Smith’s decision to credit DA McGuinness’s PCRA testimony that the non-prosecution agreement had been revoked before Schrader testified at Koehler’s trial. Koehler II, 36 A.3d at 135-38. Thus, “[t]here was ample evidence of record to support

the finding that Schrader believed that his testimony at [Koehler]’s trial could subsequently be used against him, and, therefore, had no incentive to fabricate testimony in exchange for favorable treatment by the Commonwealth.” Id. at 138.

Judge Smith’s enforcement of the purported non-prosecution agreement in Schrader’s favor in connection with the charges against him is not inconsistent with this conclusion. In deciding to dismiss the criminal charges against Schrader, Judge Smith considered whether DA Fleury offered Schrader immunity during his interview with the police in exchange for cooperating against Koehler. DA Fleury testified that he told Schrader at the interview that he was only a suspect and not that he would not be prosecuted for his involvement in the murders. Trooper Madigan testified that he recalled DA “Fleury saying that . . . Schrader was not a suspect.” D.C. Dkt. No. 48-1 at 49 (Schrader Trial Omnibus Hrg. Tr. at 44:19-20). However, Madigan’s contemporaneous report recorded that DA “Fleury . . . informed [Schrader] that prosecution would not be sought against him” for his involvement, though Madigan added that this “may have been an inference on [his] part.”⁵ D.C. Dkt. No. 48-1 at 49 (Schrader Trial Omnibus Hrg. Tr. at 44:4-22). By contrast, Dawsey testified that, at the interview, DA Fleury had expressed his belief that Schrader was in the wrong place at the wrong time and would not be prosecuted for his involvement in the murders if he cooperated. Judge Smith found Dawsey’s testimony more credible than DA Fleury’s

⁵ DA Fleury testified that Madigan’s report indicating DA Fleury said that the Commonwealth would not seek to prosecute Schrader for his involvement was the result of Madigan’s paraphrasing of the tone of the conversation.

because (1) the testimony was corroborated by Trooper Madigan's contemporaneous report, and (2) it was appropriate to infer that an attorney of Dawsey's experience would not have allowed Schrader to give valuable information in exchange for nothing. Thus, the record supported Judge Smith's decision to dismiss the charges against Schrader based on the promise law enforcement made to him when he was initially interviewed.

The Pennsylvania Supreme Court reasonably concluded that this ruling was consistent with Judge Smith's finding that the Commonwealth did not violate Koehler's Brady rights because any non-prosecution agreement had been revoked by the time Schrader testified at Koehler's trial. Each ruling was based on events that happened at different times. At the time of the investigation, Schrader met with law enforcement and was told he would not be prosecuted if he cooperated, and he thereafter made incriminating statements. By the time of Koehler's trial, Schrader was told that the agreement was revoked,⁶ and Schrader testified that he expected nothing in exchange for his testimony. By the time Schrader was charged, however, Judge Smith concluded that there was a promise that led him to initially incriminate himself and that the Commonwealth could not prosecute as result of the promise that led him to do so.

Because Koehler has not shown by clear and convincing evidence that the Pennsylvania Supreme Court's factual findings were incorrect, Miller-El, 537 U.S. at

⁶ Whether Schrader's non-prosecution agreement could have been unilaterally revoked under Pennsylvania law is irrelevant to whether the Pennsylvania Supreme Court reasonably determined that, when he testified at Koehler's trial, "Schrader believed that his testimony at [Koehler]'s trial could subsequently be used against him." Koehler II, 36 A.3d at 138.

340, we must defer to its factual determination that any non-prosecution agreement Schrader had was revoked before he testified at Koehler's trial.

D

The Pennsylvania Supreme Court's ruling that any such non-prosecution agreement was not Brady material was neither contrary to nor involved an unreasonable application of clearly established federal law. In general, a non-prosecution agreement is favorable evidence because it could lead the jury to conclude that the witness had a motive to testify in the prosecution's favor. See Giglio v. United States, 405 U.S. 150, 154-55 (1972).

When Schrader testified at Koehler's trial, any promises made at the time of his interview had been revoked. In fact, he testified that DA Fleury never told him that he would not be prosecuted. Schrader, Koehler's attorney, and DA McGuinness confirmed this at a sidebar. That Schrader initially cooperated because he expected not to be prosecuted does not bear on whether he had any such arrangement with the prosecution when he testified because his expectation when he testified is what matters for Brady purposes, as it provides information to the jury as to whether he was biased in favor of the Commonwealth at trial.⁷ Thus, the Pennsylvania Supreme Court reasonably

⁷ See Willhoite v. Vasquez, 921 F.2d 247, 249-50 (9th Cir. 1990) (determining undisclosed additional information regarding district attorney's agreement with witness's counsel "would not have assisted the jury in assessing [the witness]'s credibility" because the witness did not know about this arrangement when he testified, so the witness's "testimony was not affected by the undisclosed portion of the agreement"); McCleskey v. Kemp, 753 F.2d 877, 884 (11th Cir. 1985) ("[T]he thrust of Giglio and its progeny has been to ensure that the jury know the facts that might motivate a witness in giving

concluded that Schrader’s revoked non-prosecution agreement was not favorable impeachment evidence. See Rega v. Sec’y, Pa. Dep’t of Corr., 115 F.4th 235, 242 (3d Cir. 2024) (noting the PCRA court’s observation that the prosecution’s promise was not favorable impeachment evidence because it amounted to the mere possibility of later negotiation based on the witness’s cooperation, and concluding that “[t]his determination appears reasonable”), cert. denied sub nom. Rega v. Harry, 145 S. Ct. 1315 (2025).

Even if evidence of Schrader’s earlier non-prosecution agreement was favorable to Koehler, the Commonwealth did not suppress it. The Commonwealth disclosed Trooper Madigan’s May 5, 1995 interview notes and Trooper Madigan told the jury that “[DA] Fleury . . . informed [Schrader] that prosecution would not be sought against him for his involvement.” D.C. Dkt. No. 50-52 at 17-23 (Trial Tr. 4/3/96 PM at 64:11-70:17).⁸ DA Fleury himself testified that he never mentioned “immunity” to Schrader. App. 465-66 (Koehler Trial Tr. 4/4/96 AM at 69:24-70:1). Rather, he told Schrader he was not a suspect, but if he “[found] out later that” Schrader was not being truthful, Schrader should “watch out” because he could face prosecution. App. 465 (Koehler Trial Tr. 4/4/96 AM at 69:6-23). Thus, the defense possessed this purported favorable evidence

testimony.” (internal quotation marks omitted)), aff’d on other grounds, 481 U.S. 279 (1987).

⁸ Trooper Madigan testified that although he did not recall DA Fleury’s using the word “immunity,” DA Fleury had explained to Schrader that prosecution would not be sought against him because, at the time, they did not believe Schrader was involved in the killings. D.C. Dkt. No. 50-52 at 23-24 (Koehler Trial Tr. 4/3/96 PM at 70:22-71:6).

before trial,⁹ which provided the basis for the defense to tell the jury during its opening statement that Schrader had received immunity from prosecution.

Finally, even if the subsequent enforcement of the non-prosecution agreement could have been known (and it could not have been since it occurred after the trial, it was not material because it is not reasonably probable that the result of the trial would have been different. To convict Koehler of first-degree murder as an accomplice or co-conspirator under Pennsylvania law, the Commonwealth needed to prove beyond a reasonable doubt that an accomplice or co-conspirator killed Clark and Hopper, and that Koehler had the specific intent to kill them. See Commonwealth v. Simpson, 754 A.2d 1264, 1273-74 (Pa. 2000); Commonwealth v. Bachert, 412 A.2d 580, 583 (Pa. Super. Ct. 1979), aff'd in part, rev'd on other grounds in part, 453 A.2d 931 (Pa. 1982).¹⁰

The Commonwealth presented evidence, independent of Schrader's testimony, from which the jury could have concluded beyond a reasonable doubt that Koehler specifically intended that Curley kill both Clark and Hopper. Among other evidence, Koehler's acquaintance Kerrien Ramsey testified Koehler told her that he wanted to kill Clark, Hopper, and himself. Curley testified that Koehler brought Clark and Hopper to where Curley was staying, told Curley to kill Clark, gave him a gun for that purpose, and threatened to kill Curley if he did not follow his order. Curley testified that he and

⁹ See Lesko v. Sec'y Pa. Dep't of Corr., 34 F.4th 211, 230-31 (3d Cir. 2022) (concluding that evidence of the existence of a witness's non-prosecution agreement was not material because the petitioner possessed a copy of hearing testimony involving the witness "that covered the same ground").

¹⁰ The jury was so instructed.

Koehler searched for a place to hide Clark's body, and Koehler told Curley to hide her body in a refrigerator in a dump. Curley testified that, after he killed Clark and hid her body, Koehler told Curley to kill Hopper to eliminate a "loose link." D.C. Dkt. No. 51-1 at 63-64 (Trial 3/28/96 AM Tr. at 102-03). Additionally, the jury heard testimony about Koehler inculcating himself during his interview with the District Attorney by, for example, responding "yeah" when the District Attorney called him a "baby killer," D.C. Dkt. No. 50-67 at 11 (Trial 4/8/96 PM Tr. at 108:3-8), and when asked why he did it, saying he was "screwed" if he answered and "screwed" if he did not, D.C. Dkt. No. 50-67 at 9-10 (Koehler Trial 4/8/96 PM Tr. at 106:19-107:3). Further, Koehler suggested that if he wanted Clark killed, he would have had a family member do it for free.

Although Schrader's testimony corroborated Curley's because Schrader was present when Curley shot Clark, it "was not vital" because it was limited to his observations during the killing and preparation to dispose of her body, and other parts of the crimes were proven without his testimony. Lesko v. Sec'y Pa. Dep't of Corr., 34 F.4th 211, 231 (3d Cir. 2022); see Smith, 565 U.S. at 76 ("We have observed that evidence impeaching an eyewitness may not be material if the State's other evidence is strong enough to sustain confidence in the verdict."); see also Rega, 115 F.4th at 242 (concluding impeachment evidence regarding potential leniency offered to a witness was not material where witness was one of four witnesses testifying that defendant was the shooter and his testimony was not more important than the others witnesses' testimony).

Nor can we conclude that nondisclosure of Schrader's revoked non-prosecution agreement contributed to Koehler's death sentence. During the penalty phase of the trial,

the Commonwealth argued that Koehler orchestrated the killings even though he did not pull the trigger, as the evidence showed that he planned the murders and forced Curley to carry them out. For his part, Koehler argues that impeachment of Schrader's credibility with the non-prosecution agreement would have allowed him to show that Schrader had an incentive to minimize his role, and the suppression of the non-prosecution agreement could have prevented the imposition of the death penalty. For this argument he relies on Banks v. Dretke, where the Supreme Court determined that the suppressed evidence concerned the credibility of a witness who was critical to establishing that the defendant posed a risk of future violence, which the jury had to find to impose the death penalty. 540 U.S. 668, 681-82, 701-03 (2004). As previously discussed, however, Schrader's testimony was not critical, and the defense was able to make the same argument concerning Koehler's role as compared to the roles of Schrader and Curley based on other available evidence. We therefore reject this argument.¹¹

Thus, the state court's rejection of Koehler's Brady claim concerning Schrader's non-prosecution agreement was neither contrary to, nor an unreasonable application of, federal law.¹²

¹¹ Koehler's effort to analogize Schrader's non-prosecution agreement to the co-defendant's suppressed statement deemed material in Brady, where the defendant urged the jury to rely on his lesser role in the offense in support of a life sentence, 373 U.S. at 88, also fails because Koehler did, in fact, urge the jury to consider his lesser role in the murder.

¹² We will not revisit the order denying his application for a certificate of appealability on his Napue/Giglio claim concerning purportedly false testimony by Schrader and DA Fleury because both this Court and the District Court properly determined that Koehler has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c). Because we will not revisit this claim, we need

III

For the foregoing reasons, we will affirm.

not address Koehler's reliance on Glossip v. Oklahoma, 604 U.S. 226, 249-52 (2025) (holding false testimony was material where it undermined prosecution's theory that defendant coerced witness to commit the crime).