**IN THE**
**SUPREME COURT OF THE UNITED STATES**

**RAHIM A. ALFETLAWI,**
**Petitioner**

**CASE No.**
**HON.**

**-Vs-**

**PAUL KLEE,**
**Respondent,**
_____/

**PETITIONER'S MOTION FOR LEAVE TO FILE AN OUT OF TIME WRIT OF CERTIORARI**

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

**RAHIM A. ALFETLAWI,**
**Petitioner**

**CASE No.**
**HON.**

**-Vs-**

**PAUL KLEE,**
**Respondent,**
_____/

**PETITIONER'S MOTION FOR LEAVE TO FILE AN OUT OF TIME WRIT OF CERTIORARI**

1. On or about Oct 5, 2018, Petitioner filed with this Court a Petition for Writ of Certiorari

2. On Oct 25, 2018, The Clerk of the United States Supreme Court returned Petitioner's Writ of Certiorari because it was Out of Time.

3. on Dec 11, 2018. Petitioner sent his Petition back to the Court for review.

4. On Dec 14, 2018. The Clerk of the Court again returned the petition to Petitioner with a letter, stating that Petitioner must file a motion for leave to file an out of time petition.

5. Petitioner is presently incarcerated at the Gus Harrison Correctional Facility and is acting *in Pro Se.* with the assistance from the facility legal writer program.

6. Even thou Petitioner is with the MDOC Legal Writer; the law library may be still closed. At which time his case is on whole until the law library is reopen.

7. The facility may be on lock down and Petitioner and the legal writer may be locked in their rooms and there will be no movement, and the Petitioner doesn't have control over this lock down.

8. Even thou Petitioner is with the legal writer's program, he still has to kite the library, and then he will have to wait two or three days before his even called out for the law library.

9. Petitioner is in the mental health program and at the time he received his opinion back from the Sixth Circuit Court of Appeal, he was going through a bad mental issues that required him to be heavily Medicated and placed on suicide watch because he tired to kill himself repeatedly. Not knowing that the clock was running on his chance to file a Writ of Certiorari within this Court.

10. Petitioner requests that he be afforded time to file his Petition in this Honorable Court.

For these reasons, Petitioner, **Rahim A. Alfetlawi,** request that this Court grant him this motion so as to allow him to file a Writ of Certiorari.

Respectfully submitted,

R. A Alfetlawi

Rahim A. Alfetlawi # 857207
Petitioner *in pro per*

Dated: 2 / 7 2019

No. 17-2439

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | | |
|---|---|---|
| RAHIM ALFETLAWI, | ) | |
| | ) | |
| Petitioner-Appellant, | ) | |
| | ) | |
| v. | ) | ORDER |
| | ) | |
| PAUL KLEE, Warden, | ) | |
| | ) | |
| Respondent-Appellee. | ) | |
| | ) | |

Rahim Alfetlawi, a pro se Michigan prisoner, appeals a district court judgment denying his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 and moves this court for a certificate of appealability. He also moves for leave to proceed in forma pauperis.

In 2012, a jury convicted Alfetlawi of first-degree premeditated murder, Mich. Comp. Laws § 750.316(1)(a), possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b, and carrying a firearm with unlawful intent, Mich. Comp. Laws § 750.226. The convictions arose after Alfetlawi admittedly shot the victim, his step-daughter, in the head with a nine millimeter handgun. At trial, evidence was presented that Alfetlawi had a "tumultuous relationship" with the victim, had physically and sexually abused her, and had threatened to kill her. Alfetlawi was sentenced to an effective term of life in prison without the possibility of parole. The Michigan Court of Appeals affirmed, *People v. Alfetlawi*, No. 313855, 2014 WL 4263222 (Mich. Ct. App. Aug. 28, 2014) (per curiam), and the Michigan Supreme Court denied leave to appeal, *People v. Alfetlawi*, 862 N.W.2d 182 (Mich. 2015) (mem.).

In 2015, Alfetlawi filed the present habeas corpus petition, claiming that: (1) the trial court abused its discretion and deprived him of a fair trial, due process, and his right to cross-

examination when it admitted certain hearsay statements and evidence of his prior bad acts; (2) he was denied his Fifth Amendment right against self-incrimination and thus was deprived of a fair trial; and (3) there was insufficient evidence to support his first-degree premeditated murder conviction. The district court denied the petition, holding that Alfetlawi's claims were reasonably adjudicated on the merits by the state courts, and declined to issue a certificate of appealability.

This court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). If a state court previously adjudicated the petitioner's claims on the merits, the district court may not grant habeas relief unless the state court's adjudication resulted in "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or "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); *see Harrington v. Richter*, 562 U.S. 86, 100 (2011).

Alfetlawi's first claim challenges several evidentiary rulings made by the trial court. In particular, Alfetlawi claims that the trial court erred by admitting testimony regarding: (1) his "repeated sexual and general physical assaults" upon the victim and her mother (Alfetlawi's wife); (2) his "repeated threats against the physical and emotional wellbeing" of the victim and others; (3) "the stalking and surveillance [that he] subjected [the victim] to"; (4) "the fear and hatred [that the victim] and others had of [him]"; and (5) his "mental state and obsession" with the victim. Alfetlawi claims that, because this testimony is improper hearsay, irrelevant, inadmissible as "prior bad acts" under Michigan Rule of Evidence 404(b), and unfairly prejudicial, admission of the testimony deprived him of his rights to a fair trial, to due process, and to cross-examination under the Sixth Amendment.

The district court first declined to grant relief to Alfetlawi on his subclaim that the trial court improperly admitted certain testimony in violation of the rule against hearsay, reasoning that the admissibility of such testimony under the Michigan Rules of Evidence is not cognizable on federal habeas review. Reasonable jurists could not disagree. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (explaining that "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions"). Nor could reasonable jurists disagree with the district court's conclusion that Alfetlawi failed to show that the Michigan Court of Appeals erred in its determination that the challenged testimony was admissible under state law. *See Alfetlawi*, 2014 WL 4263222, at *4 (finding that the testimony was admissible under the Michigan Rules of Evidence either as non-hearsay or pursuant to an exception to the rule against hearsay).

Alfetlawi's next subclaim—that the trial court erred in admitting certain testimony that he alleges was irrelevant and unfairly prejudicial—also raises a question of state law that is not cognizable on federal habeas review. *See Estelle*, 502 U.S. at 67-68. In any event, the Michigan Court of Appeals concluded that the challenged testimony was properly admitted under the Michigan Rules of Evidence because its probative value was not substantially outweighed by any unfair prejudice, *Alfetlawi*, 2014 WL 4263222, at *5, *7, and "the Supreme Court has never held (except perhaps within the capital sentencing context) that a state trial court's admission of *relevant* evidence, no matter how prejudicial, amounted to a violation of due process," *Blackmon v. Booker*, 696 F.3d 536, 551 (6th Cir. 2012). Jurists of reason therefore could not debate the district court's rejection of this subclaim.

Alfetlawi's next subclaim challenges the admission of evidence regarding his prior bad acts—namely, his acts of physically and sexually abusing, stalking, and surveilling the victim. Again, this subclaim raises a non-cognizable question of state law. *See Estelle*, 502 U.S. at 67-68. Furthermore, "[t]here is no clearly established Supreme Court precedent which holds that a state violates due process by permitting propensity evidence in the form of other bad acts evidence." *Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003). Thus, the trial court's decision

to admit the prior bad acts evidence could not have been "contrary to" federal law as determined by the Supreme Court. *See* 28 U.S.C. § 2254(d)(1). Because the trial court's admission of the prior bad acts evidence did not "so perniciously affect the prosecution of [Alfetlawi's] criminal case as to deny [him] the fundamental right to a fair trial," *Kelly v. Withrow*, 25 F.3d 363, 370 (6th Cir. 1994), jurists of reason could not debate the district court's rejection of this subclaim.

Alfetlawi also claims that admission of the victim's prior statements, through the testimony of other witnesses, violated his Confrontation Clause rights. The Michigan Court of Appeals rejected this claim on the ground that the Confrontation Clause was not implicated because no testimonial statements made by the victim were introduced at trial. *Alfetlawi*, 2014 WL 4263222, at *5. The Confrontation Clause prevents only the admission of testimonial statements, made out-of-court by a declarant, that are offered for their truth. *See Crawford v. Washington*, 541 U.S. 36, 68 (2004). Here, the only statements from the victim admitted at trial were those that she had made when she confided in her family and friends—i.e., those that were non-testimonial. *See, e.g., United States v. Boyd*, 640 F.3d 657, 665 (6th Cir. 2011) ("[S]tatements made to friends and acquaintances are non-testimonial."). Accordingly, no reasonable jurist could disagree with the district court's conclusion that the Michigan Court of Appeals' decision on this subclaim was not contrary to or an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts.

Next, Alfetlawi claims that his Fifth Amendment right against self-incrimination was violated (1) when a police dispatcher testified that, immediately after the shooting, Alfetlawi told her that he had just killed his step-daughter but did not tell her that the shooting was accidental or that he had called for paramedics, and (2) when the prosecutor referred to this testimony during closing statements to argue that it was evidence of Alfetlawi's guilt.

The Michigan Court of Appeals rejected this claim, reasoning first that the challenged testimony and the prosecutor's reference to it spoke only to Alfetlawi's failure to include certain information when making a voluntary statement as opposed to a decision to remain silent. *Alfetlawi*, 2014 WL 4263222, at *8. The state court also reasoned that, to the extent that the

prosecutor's reference to the challenged testimony could be construed as a comment on Alfetlawi's silence, there was no Fifth Amendment violation because the statements that Alfetlawi made (or did not make) occurred (or did not occur) prior to his arrest, before he was required to be given *Miranda* warnings. *Id.* The district court determined that the Michigan Court of Appeals' resolution of this claim was not contrary to or an unreasonable application of clearly established federal law and was not based on an unreasonable determination of the facts. In doing so, the district court relied upon *Salinas v. Texas*, in which the Supreme Court held that prosecutors may use pre-arrest silence as substantive evidence of guilt if a defendant does not expressly invoke the right to remain silent. 570 U.S. 178, 181-84 (2013). In view of this precedent and Alfetlawi's failure to expressly invoke his right to remain silent during his encounter with the police dispatcher, no reasonable jurist could debate the district court's resolution of this claim.

Finally, Alfetlawi claims that his first-degree premeditated murder conviction is not supported by sufficient evidence. In reviewing the sufficiency of the evidence, "the relevant question is whether, 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In a federal habeas proceeding, review of a sufficiency claim is doubly deferential: "First, deference should be given to the trier-of-fact's verdict, as contemplated by *Jackson*; second, deference should be given to the Michigan Court of Appeals' consideration of the trier-of-fact's verdict, as dictated by [the Antiterrorism and Effective Death Penalty Act]." *Tucker v. Palmer*, 541 F.3d 652, 656 (6th Cir. 2008).

Applying this deferential standard, the district court concluded that the Michigan Court of Appeals did not unreasonably apply the *Jackson* standard in rejecting Alfetlawi's claim that there was insufficient evidence to support his first-degree murder conviction. To convict Alfetlawi of first-degree, premeditated murder, the prosecution had to prove that he intentionally killed the victim with premeditation and deliberation. *People v. Anderson*, 531 N.W.2d 780, 786 (Mich.

Ct. App. 1995). "Premeditation and deliberation require sufficient time to allow the defendant to take a second look," *People v. Marsack*, 586 N.W.2d 234, 237 (Mich. Ct. App. 1998), and "may be established by evidence of '(1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide,'" *People v. Abraham*, 599 N.W.2d 736, 745 (Mich. Ct. App. 1999) (quoting *People v. Schollaert*, 486 N.W.2d 312, 318 (Mich. Ct. App. 1992)).

The evidence showed that Alfetlawi had a "tumultuous relationship" with the victim and had threatened to kill her if she told her mother (Alfetlawi's wife) that Alfetlawi had sexually abused her or if she refused to leave Michigan and come live with him in Minnesota. *See Alfetlawi*, 2014 WL 4263222, at *2-3. The evidence also showed that Alfetlawi had installed spyware on the victim's cell phone in order to monitor her calls and that, on the day before the crime, the victim had revealed to her mother over the phone that Alfetlawi had sexually abused her and had threatened to kill her. *See id.* A few hours later, Alfetlawi—who, according to his wife, had become "agitated"—left Minnesota with a loaded handgun and drove to Michigan. *See id.* at *3. On the day of the crime, Alfetlawi—armed with his handgun—picked up the victim and drove her to her grandmother's house, where he then shot her in the head. *See id.* Alfetlawi then went to a police station and asked to be arrested because he had killed his step-daughter. *See id.*

Viewing this and all other evidence most favorably to the prosecution, *Jackson*, 443 U.S. at 319, the Michigan Court of Appeals determined that a rational trier of fact could have found that Alfetlawi's killing of the victim was deliberate and premeditated, *Alfetlawi*, 2014 WL 4263222, at *2-3. Although Alfetlawi argues that the evidence against him is solely circumstantial and does not show that he acted with premeditation, this court has explained that "[c]ircumstantial evidence alone is sufficient to support a conviction," *United States v. Reed*, 167 F.3d 984, 992 (6th Cir. 1999), and that it "may not reweigh the evidence . . . or substitute [its] judgment for that of the jury," *United States v. Martinez*, 430 F.3d 317, 330 (6th Cir. 2005). Given the evidence and this authority, reasonable jurists could not debate the district court's

conclusion that the Michigan Court of Appeals did not unreasonably apply the *Jackson* standard in rejecting Alfetlawi's insufficiency-of-the-evidence claim.

Accordingly, the court **DENIES** the motion for a certificate of appealability and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Additional material from this filing is available in the Clerk's Office.