FILED
United States Court of Appeals
Tenth Circuit

February 13, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RODNEY DOUGLAS EAVES,

Petitioner - Appellant,

v.

COLORADO DEPARTMENT OF CORRECTIONS; THE ATTORNEY GENERAL STATE OF COLORADO,

Respondents - Appellees.

No. 19-1452
(D.C. No. 1:18-CV-02619-CMA)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MATHESON**, **KELLY**, and **EID**, Circuit Judges.

Rodney Douglas Eaves, a Colorado state prisoner proceeding pro se, seeks a certificate of appealability ("COA") to challenge the district court's denial of his 28 U.S.C. § 2254 application for a writ of habeas corpus. *See* 28 U.S.C. § 2253(c)(1)(A) (requiring a COA to appeal "the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court"). He also

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

seeks leave to proceed *in forma pauperis* ("*ifp*"). Exercising jurisdiction under 28 U.S.C. § 1291, we deny both requests and dismiss this matter.[1]

I. BACKGROUND

Mr. Eaves is serving a 30-year sentence based on his convictions for aggravated robbery and other crimes. After his unsuccessful appeal to the Colorado Court of Appeals ("CCA"), he applied for federal habeas relief under 28 U.S.C. § 2254, asserting 13 claims. The district court directed the Respondents to file a pre-answer response addressing timeliness, exhaustion, and procedural default; and it ordered that Mr. Eaves could file a reply. After receiving these filings, the court dismissed as procedurally defaulted (1) the Fourteenth Amendment components of claims one and two and (2) claims six through thirteen in their entirety. Mr. Eaves moved to amend his reply to show that prejudice and miscarriage of justice should preclude procedural default of these claims. The court construed the motion as a request for review of its dismissal order, and denied it because Mr. Eaves was already afforded an opportunity to make this showing in his reply. In a separate order, the court denied relief on the remaining five claims and denied a COA.

[1] Because Mr. Eaves is pro se, we construe his filings liberally, but we do not act as his advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008). He is subject to the same procedural rules governing other litigants. *See United States v. Green*, 886 F.3d 1300, 1307-08 (10th Cir. 2018).

II. DISCUSSION

A. *COA Requirement and AEDPA*

To review a § 2254 application, we must grant a COA. 28 U.S.C. § 2253(c)(1); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). To receive a COA, an applicant must make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right," *Slack v. McDaniel*, 529 U.S. 473, 484. When the district court denied a habeas claim on procedural grounds, the applicant must also show "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484; *accord Dulworth v. Jones*, 496 F.3d 1133, 1137 (10th Cir. 2007). Thus, if an applicant cannot make a showing on the procedural issue, we need not address the constitutional question. *See Slack*, 529 U.S. at 485.

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), when a state court has adjudicated the merits of a claim, a federal district court cannot grant habeas relief on that claim unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *id.* § 2254(d)(2). When the district court has denied habeas relief because the petitioner failed to overcome AEDPA, our COA decision requires us to determine whether reasonable jurists could

debate the court's application of AEDPA to the state court's decisions. *Miller-El*, 537 U.S. at 336.

B. ***Analysis***

In his brief to this court, Mr. Eaves challenges the district court's denial of his motion to amend his reply to the Respondents' pre-answer response. But as the district court noted, Mr. Eaves could have made his arguments in his reply brief. No reasonable jurist would debate that the district court acted within its discretion. *See Pittman v. Fox*, 766 F. App'x 705, 721 (10th Cir. 2019) (unpublished) (reviewing for abuse of discretion the denial of a habeas petitioner's motion for reconsideration of district court order).[2] We deny a COA on this issue.

Mr. Eaves also challenges the court's rulings on each of the claims that were not procedurally defaulted. Before turning to those claims, we note that Mr. Eaves repeatedly argues that the CCA did not address his claims in whole or in part. Aplt. Br. at 6, 8, 10, 11, 12. If that were so, he would not need to meet the demanding

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[2] *See* 10th Cir. R. 32.1 ("Unpublished decisions are not precedential, but may be cited for their persuasive value."); *see also* Fed. R. App. P. 32.1.

Mr. Eaves's arguments in his brief to this court are unavailing. He argues that when the CCA struck his original 88-page brief and ordered him to file a 45-page brief, the CCA did not tell him he needed to "concisely present his claims," including those the district court deemed procedurally barred. Aplt. Br. at 3. But federal habeas applicants must exhaust their arguments in the state courts, 28 U.S.C. § 2254(b)(1), and Mr. Eaves does not contend here that he did so in the brief reviewed by the CCA. Mr. Eaves asserts that the district court "misconstrued" his motion and cites Fed. R. Civ. P. 15(a)(2) and *Foman v. Davis*, 371 U.S. 178 (1962). Aplt. Br. at 4. But Rule 15(a)(2) and *Foman* concern amendment of pleadings, not whether a litigant may file an amended brief to contest an order.

AEDPA requirements on federal habeas review. *See Stouffer v. Duckworth*, 825 F.3d 1167, 1179 (10th Cir. 2016) ("[I]f the state court did not decide the claim on the merits, the stringent principles of deference under . . . § 2254 are inapplicable." (quotations omitted)). But Mr. Eaves is mistaken. The district court showed that the CCA addressed each claim, in most instances quoting from the CCA's decision.

But even if the CCA did not fully address one or more of Mr. Eaves's claims, they are still subject to AEDPA review. Where, as here, "a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Johnson v. Williams*, 568 U.S. 289, 298 (2013) (quoting *Harrington v. Richter*, 562 U.S. 86, 99 (2011)). Mr. Eaves has not overcome this presumption because he has not identified any "state-law procedural principles" or other "indication" showing the state court did not resolve his claim. *Id.* (quoting *Harrington*, 562 U.S. at 99).

We therefore review the claims under §§ 2254(d)(1) & (2) and conclude Mr. Eaves fails to show that reasonable jurists could debate the district court's denial of relief. We therefore deny a COA on all of his claims.

1. **Fourth Amendment Search and Seizure Claim**

The district court denied Mr. Eaves's Fourth Amendment claim alleging illegal searches and seizures because, under *Stone v. Powell*, 428 U.S. 465, 494 (1976), federal habeas relief may not be granted when the state has provided a full and fair opportunity to litigate the claim, and Mr. Eaves has failed to show he was denied that

opportunity. The record shows he filed motions to suppress, the state trial court held evidentiary hearings, and he raised his Fourth Amendment claim on appeal. A COA is not warranted because reasonable jurists would not debate the district court's determination under *Stone*.

2. Fifth Amendment Claim – No Probable Cause Affidavit with Complaint

The district court rejected Mr. Eaves's argument that his Fifth Amendment rights were violated because the state trial court accepted the criminal complaint and information without a supporting affidavit. The CCA, however, found that a supporting affidavit was filed in the trial court that supported the complaint and information, and the district court, applying AEDPA under § 2254(d)(2), held that Mr. Eaves failed to show this finding was based on an unreasonable determination of facts. *See also United States v. Mechanik*, 475 U.S. 66, 73 (holding conviction by the petit jury shows there was probable cause and renders harmless lack of probable cause for the indictment); *United States v. Hillman*, 642 F.3d 929, 936 (10th Cir. 2011). Mr. Eaves has not shown how reasonable jurists would debate this holding. We deny a COA.

3. Sixth Amendment Claim – Speedy Trial Violation

The district court denied habeas relief on Mr. Eaves's speedy trial claim, concluding that he did not show that the CCA's affirmance of the trial court's denial of the claim was contrary to or an unreasonable application of the Supreme Court's decision in *Barker v. Wingo*, 407 U.S. 514 (1972). The district court determined that *Barker*'s four-factor test supported the CCA's decision. For substantially the same

reasons as stated by the district court, we agree. Reasonable jurists would not debate otherwise. We deny a COA.

4. Fourteenth Amendment Claim – Right to Discovery

The CCA rejected Mr. Eaves's claim that he was entitled to discovery of a detective's handwritten and voice-recorded notes when the detective testified they were identical to the typewritten notes that were provided. The district court said this ruling was consistent with *California v. Trombetta*, 467 U.S. 479 (1984), and *Arizona v. Youngblood*, 488 U.S. 51 (1988), and therefore Mr. Eaves could not overcome AEDPA review.

The CCA also rejected Mr. Eaves's contention that he was not afforded adequate opportunity to review AT&T records of GPS data. Although the prosecution did not provide these records in print form, it gave electronic copies to Mr. Eaves's investigator and advisory counsel at least three times. The district court said that Mr. Eaves had failed to show the CCA's determination of no discovery violation was contrary to or an unreasonable application of clearly established Supreme Court law or was based on an unreasonable determination of facts.

Because the district court's determinations would not be debatable among reasonable jurists, we deny a COA on this issue.

5. Sixth Amendment Claim – Exclusion of Evidence on an Alternate Suspect Defense

The CCA affirmed the trial court's decision to quash Mr. Eaves's subpoena for records related to an alleged alternative suspect because it was a "fishing expedition"

that contravened state evidence rules and because Mr. Eaves failed to state why he needed the information or how the evidence would connect the suspect to the crime. It also affirmed the trial court's decision to quash Mr. Eaves's subpoenas to eight police officers who did not investigate his robbery case but investigated a case concerning a shooter, where both crimes involved a Nissan. The CCA relied on multiple grounds, including Mr. Eaves's failure to show a non-speculative connection to the alternate suspect and the trial court's determination that the evidence would unduly confuse the jury under Colorado Rule of Evidence 403.

The district court said the state courts concluded that Mr. Eaves's subpoenas requested materials and testimony that were inadmissible under the state rules of evidence. It said Mr. Eaves had failed to show how the exclusion of the evidence was contrary to or an unreasonable application of clearly established federal law or was based on an unreasonable determination of facts. 28 U.S.C. § 2254(d).

In his brief to this court, Mr. Eaves has not made a "substantial showing of" how these state court rulings were a "denial of a constitutional right," 28 U.S.C. § 2253(c)(2), nor has he shown how reasonable jurists would debate the district court's rejection of this claim. We deny a COA.

III. CONCLUSION

We deny a COA, deny the request to proceed *ifp*, and dismiss this matter.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
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Clerk of Court

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February 13, 2020

Rodney Douglas Eaves
BCCF - Bent County Correctional Facility
11560 Road FF75
Las Animas, CO 81054
173190

RE: 19-1452, Eaves v. CO Dept. of Corrections, et al
Dist/Ag docket: 1:18-CV-02619-CMA

Dear Appellant:

Enclosed is a copy the court's final order issued today in this matter.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of the Court

cc: Christine Cates Brady

CMW/lab

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello

Civil Action No. 18-cv-02619-CMA

RODNEY DOUGLAS EAVES,

Applicant,

v.

COLORADO DEPARTMENT OF CORRECTIONS, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER ON APPLICATION FOR A WRIT OF HABEAS CORPUS

The matter before the Court is an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket No. 1), filed *pro se* by Applicant Rodney Douglas Eaves. Respondents have filed an Answer (Docket No. 20) and Mr. Eaves has filed a Reply (Docket No. 22). After considering the parties' filings, along with the state court record, the Court will deny the Application.

I. Background

In May of 2016, Mr. Eaves was convicted by a jury in El Paso County District Court Case No. 2015CR1188 of aggravated robbery as a crime of violence, theft, menacing, and possession of a weapon by a previous offender, and was sentenced to thirty years in prison. (Docket No. 8-1 at 12; 8-6 at 5).

In Mr. Eaves' direct appeal proceeding, the Colorado Court of Appeals

summarized the relevant facts as follows:

> In 2015, witnesses saw a man tampering with the back door of a check-cashing business in Colorado Springs, but before anyone contacted him, he left in a Ford station wagon. Two days later, a man – dressed in military fatigues and brandishing a shotgun – entered through the same back door and robbed the business. The robber left with approximately $48,000 in cash and drove away in a Nissan. During the robbery, a man matching the description of the man seen tampering with the back door two days earlier entered the front door of the business and left at the same time the robber departed.
>
> Surveillance video showed that just before the robbery, the Nissan and Ford were parked close together in a nearby parking lot and the driver of the Ford helped jump-start the Nissan. Video also showed that the Nissan was at that location two nights earlier, when the person driving the Ford was seen tampering with the back door. The surveillance camera captured the Ford's license plate, which allowed police to identify the registered owner. The owner of the Ford told police that a month before the robbery, he lent the car to Eaves and that, to the best of his knowledge, Eaves remained in possession of the vehicle. The owner's son told investigators that Eaves also owned a Nissan.
>
> Police continued their investigation by reviewing Eaves' Facebook page. Posted to that page, police found a photo of Eaves posing in military fatigues and a video of him at a table with large bundles of cash. While the picture was nearly two years old, the video was from just two days after the robbery.
>
> The investigation also revealed that Eaves had rented a storage unit a short distance from the check-cashing business. Surveillance video at the storage facility showed a man arriving at the storage facility minutes after the robbery in the same Nissan that had left the scene of the robbery. The man on the video left the storage facility about forty-five minutes later in the same Ford station wagon seen at the robbery scene.
>
> Based on the foregoing information, police obtained a

> warrant to search Eaves' storage unit. In the unit, police found the Nissan, which had a dead battery, clothing similar to the clothes the robber wore, a shotgun similar to the one the robber had used, and approximately $8000 in cash.
>
> Eaves was arrested and charged with robbery as a crime of violence, theft, menacing, and possession of a weapon by a previous offender. Five months into the case, Eaves elected to proceed pro se. He then filed numerous motions, including various suppression motions. Ultimately, the trial court denied each motion to suppress.
>
> In 2016, the trial court held a nine-day jury trial, with Eaves continuing to represent himself during trial. Eaves had advisory counsel both before and during trial. At the conclusion of trial, the jury returned guilty verdicts on all charges, and the trial court sentenced Eaves to thirty years in prison.

People v. Rodney D. Eaves, No. 16CA1557 (Colo. App. Aug. 2, 2018) (unpublished) (Docket No. 8-6 at 3-5). The judgment of conviction was affirmed on direct appeal on August 2, 2018. (Docket. No. 8-6). Mr. Eaves then filed a petition for rehearing (Docket. No. 9 at 22-32), which the CCA denied on September 13, 2018. (Docket. No. 8-7). Mr. Eaves did not file a petition for writ of certiorari in the Colorado Supreme Court.

Mr. Eaves initiated this § 2254 proceeding on October 12, 2018. Mr. Eaves asserted thirteen claims in his Application. (Docket No. 1). In their Pre-Answer Response, Respondents did not challenge the timeliness of the Application under the one-year limitation period set forth in 28 U.S.C. § 2244(d). (Docket No. 8 at 5). Respondents argued, however, that certain of Mr. Eaves' claims were procedurally defaulted in the state courts and, therefore, those claims were barred from merits review by this Court. (*Id.* at 5-15).

In a January 2, 2019, Order to Dismiss in Part and for Answer, this Court determined that the Fourth Amendment component of claim one, the Fifth Amendment component of claim two, and claims three, four, and five were properly exhausted in the state courts, and dismissed the remaining claims as procedurally defaulted. (Docket No. 11). Respondents were ordered to file an Answer, and Mr. Eaves was afforded the opportunity to file a Reply. (*Id.*). Respondents filed an Answer on March 4, 2019 (Docket No. 20), and Mr. Eaves filed a Reply on March 26, 2019 (Docket No. 22). Upon entry of the January 2, 2019, Order to Dismiss in Part and for Answer (Docket No. 11), the following claims remain at issue in this action:

> 1. Mr. Eaves' claim that his Fourth Amendment rights were violated by illegal searches and seizures when the trial court and the prosecution did not address his suppression arguments;
>
> 2. Mr. Eaves' claim that his Fifth Amendment rights were violated when the trial court did not address jurisdiction issues and proceeded without establishing probable cause;
>
> 3. Mr. Eaves' claim that his Sixth Amendment rights were violated when the trial court summarily denied his motions for dismissal based on speedy trial violations;
>
> 4. Mr. Eaves' claim that his Fourteenth Amendment right to discovery was violated;
>
> 5. Mr. Eaves' claim that his Sixth Amendment rights were violated when the trial court denied the admission of evidence, testimony, and witnesses on an alternate suspect defense.

(Docket No. 1 at 5-6).

II. Legal Standards

Title 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death

Penalty Act of 1996 ("AEDPA"), provides that a writ of habeas corpus may not be issued with respect to any claim that was adjudicated on the merits in state court unless the state court adjudication:

> (1) 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
>
> (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). Mr. Eaves bears the burden of proof under § 2254(d). *See Woodford v. Visciotti*, 537 U.S. 19, 25 (2002) (per curiam).

The threshold question the Court must answer under § 2254(d)(1) is whether Mr. Eaves seeks to apply a rule of law that was clearly established by the Supreme Court at the time his conviction became final. *See Williams v. Taylor*, 529 U.S. 362, 390 (2000). Clearly established federal law "refers to the holdings, as opposed to the dicta, of [the Supreme] Court's decisions as of the time of the relevant state-court decision." *Id.* at 412. Furthermore,

> clearly established law consists of Supreme Court holdings in cases where the facts are at least closely-related or similar to the case *sub judice*. Although the legal rule at issue need not have had its genesis in the closely-related or similar factual context, the Supreme Court must have expressly extended the legal rule to that context.

House v. Hatch, 527 F.3d 1010, 1016 (10th Cir. 2008). If there is no clearly established federal law, that is the end of the Court's inquiry under § 2254(d)(1). *See id.* at 1018.

If a clearly established rule of federal law is implicated, the Court must determine whether the state court's decision was contrary to or an unreasonable application of that clearly established rule of federal law. *See Williams*, 529 U.S. at 404-05. A state court decision is contrary to clearly established federal law if the state court (a) "applies a rule that contradicts the governing law set forth in [Supreme Court] cases," or (b) "confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a result different from [Supreme Court] precedent." *Id.* at 405-06. "The word 'contrary' is commonly understood to mean 'diametrically different,' 'opposite in character or nature,' or 'mutually opposed.'" *Id.* at 406 (citation omitted). The state appellate court is not required to cite to the clearly established Supreme Court case law, or even be aware of it, so long as nothing in the state appellate court decision contradicts that law. *Early v. Packer,* 537 U.S. 3, 8 (2002).

"A state court decision involves an unreasonable application of clearly established federal law when it identifies the correct governing legal rule from Supreme Court cases, but unreasonably applies it to the facts." *Williams*, 529 U.S. at 407-08. The Court's inquiry pursuant to the "unreasonable application" clause is an objective inquiry. *See id.* at 409-10. "[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather that application must also be unreasonable." *Id.* at 411. "[A] decision is 'objectively unreasonable' when most reasonable jurists exercising their independent judgment

would conclude the state court misapplied Supreme Court law." *Maynard v. Boone*, 468 F.3d 665, 671 (10th Cir. 2006). Furthermore,

> [E]valuating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations. [I]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by [the Supreme] Court.

Harrington v. Richter, 562 U.S. 86, 101 (2011) (internal quotation marks and citation omitted). In conducting this analysis, the Court "must determine what arguments or theories supported or . . . could have supported[] the state court's decision" and then "ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the Supreme] Court." *Id.* at 102. In addition, "review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

Under this standard, "only the most serious misapplications of Supreme Court precedent will be a basis for relief under § 2254." *Maynard*, 468 F.3d at 671; *see also Richter*, 562 U.S. at 102 ("even a strong case for relief does not mean the state court's contrary conclusion was unreasonable").

> As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

Richter, 562 U.S. at 103.

The Court reviews claims of factual errors pursuant to 28 U.S.C. § 2254(d)(2). *See Romano v. Gibson*, 278 F.3d 1145, 1154 n.4 (10th Cir. 2002). Section 2254(d)(2) allows the Court to grant a writ of habeas corpus only if the relevant state court decision was based on an unreasonable determination of the facts in light of the evidence presented to the state court. Pursuant to § 2254(e)(1), the Court must presume that the state court's factual determinations are correct and Mr. Eaves bears the burden of rebutting the presumption by clear and convincing evidence. "The standard is demanding but not insatiable . . . [because] '[d]eference does not by definition preclude relief.'" *Miller-El v. Dretke*, 545 U.S. 231, 240 (2005) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003)).

III. Analysis

A. Claim One

In Claim One, Mr. Eaves contends that his Fourth Amendment rights were violated by illegal searches and seizures when the trial court and the prosecution did not address his suppression arguments. (Docket No. 1 at 5).

The Fourth Amendment protects against unreasonable search and seizure and is generally enforced through the exclusionary rule. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 254 (1983). Respondents argue that Mr. Eaves' Fourth Amendment claim must be dismissed because the claim is not cognizable in this habeas corpus action pursuant to *Stone v. Powell*, 428 U.S. 465 (1976). Under *Stone*, "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained

in an unconstitutional search or seizure was introduced at his trial." *Id.* at 494 (footnotes omitted); *see also Miranda v. Cooper*, 967 F.2d 392, 401 (10th Cir. 1992). A full and fair opportunity to litigate a Fourth Amendment claim in state court includes the procedural opportunity to litigate the claim as well as a full and fair evidentiary hearing. *See Miranda*, 967 F.2d at 401. A full and fair opportunity to litigate also "contemplates recognition and at least colorable application of the correct Fourth Amendment constitutional standards." *Gamble v. Oklahoma*, 583 F.2d 1161, 1165 (10th Cir. 1978). It is Mr. Eaves' burden to demonstrate he was denied a full and fair opportunity to litigate his Fourth Amendment claim in state court. *See Young v. Conway*, 715 F.3d 79, 92 (2d Cir. 2013) (Raggi, Circuit J., dissenting from denial of reh'g en banc); *Peoples v. Campbell*, 377 F.3d 1208, 1224 (11th Cir. 2004); *Sanna v. Dipaolo*, 265 F.3d 1, 8 (1st Cir. 2001); *Woolery v. Arave*, 8 F.3d 1325, 1328 (9th Cir. 1993); *Davis v. Blackburn*, 803 F.2d 1371, 1372 (5th Cir. 1986) (per curiam); *Doleman v. Muncy*, 579 F.2d 1258, 1266 (4th Cir. 1978).

Mr. Eaves fails to demonstrate that he was denied a procedural opportunity to litigate his Fourth Amendment claim in state court. The record before the Court demonstrates that Mr. Eaves indeed had a procedural opportunity to litigate his Fourth Amendment search and seizure claim in state court, and that he took advantage of that opportunity. Specifically, Mr. Eaves filed motions to suppress the evidence pertinent to his Fourth Amendment claim, the trial court held evidentiary hearings on the motions to suppress, and Mr. Eaves then raised the Fourth Amendment claim on direct appeal. Mr. Eaves also fails to demonstrate that the state courts failed to make colorable

application of the correct Fourth Amendment standards. Any such argument lacks merit because the record before the Court demonstrates that the state courts thoughtfully considered and applied relevant Fourth Amendment constitutional standards in concluding that law enforcement officers executed valid search warrants and had probable cause to conduct the searches and seizures at issue. (*See* Docket No. 8-6 at 6-19.) Under these circumstances, consideration of Mr. Eaves' Fourth Amendment claim in this habeas corpus action is barred by *Stone*. *See Smallwood v. Gibson*, 191 F.3d 1257, 1265 (10th Cir. 1999) (*Stone* bar applied when the state courts "thoughtfully considered the facts underlying [the] Fourth Amendment claim and rejected the claim on its merits, applying appropriate Supreme Court precedent").

Further, Mr. Eaves has failed to identify any specific factual determinations, as opposed to legal conclusions, by the state court that he believes were incorrect, and he has presented no clear and convincing evidence to rebut the presumption that the state court's factual determinations were correct under § 2254(e)(1).

The crux of Mr. Eaves' Fourth Amendment claim in this action appears to be a substantive disagreement with the resolution of that claim by the state courts. However, disagreement with the state courts' resolution of a Fourth Amendment claim is not enough to overcome the bar in *Stone*. *See Matthews v. Workman*, 577 F.3d 1175, 1194 (10th Cir. 2009) (rejecting petitioner's argument that state court misapplied Fourth Amendment doctrine in reaching wrong conclusions about probable cause because that was not the proper question under *Stone*); *see also Pickens v. Workman*, 373 F. App'x 847, 850 (10th Cir. 2010) (stating that "[t]he opportunity for full and fair litigation is not

defeated merely because a participant might prefer a different outcome"). Thus, consideration of the merits of Mr. Eaves' Fourth Amendment claim is barred by *Stone v. Powell*.

B. Claim Two

In Claim Two, Mr. Eaves asserts that his Fifth Amendment rights were violated when the trial court did not address jurisdiction issues and proceeded without establishing probable cause. More specifically, he contends that the trial court accepted the criminal complaint and information without a supporting affidavit of probable cause, and denied his pro se motions to dismiss for lack of probable cause without addressing the issue. (Docket No. 1 at 5).

The Colorado Court of Appeals determined that Mr. Eaves' claim was belied by the trial court record, since the trial court's electronic filing system showed that a supporting affidavit was, in fact, filed in the trial court. The court stated:

> Mr. Eaves argues that the trial court erred by not dismissing the charges because the criminal complaint and information were filed without a supporting affidavit. The record belies Eaves' assertion.
>
> "Where the defendant has not had or waived a preliminary hearing, there shall be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of the affiant that the offense was committed." § 16-5-203, C.R.S. 2019. On March 13, 2015, an officer with the Colorado Springs Police Department prepared an affidavit that described Eaves involvement in the commission of the offense.
>
> [fn. 6] The affidavit is not included in the record on appeal. We, however, may take judicial notice of court files. *People v. Linares-Guzman*, 195 P.3d 1130, 1135 (Colo. App.

> 2008). Here, the officer's affidavit was available on the court's electronic filing system, which shows that it was filed on March 13, 2015.
>
> This affidavit was filed in the trial court two weeks before the prosecutor filed the complaint and information, and six weeks before Eaves, through his then counsel, waived his preliminary hearing. Because the complaint was supported by an affidavit, the trial court did not err in denying Eaves' motion to dismiss.

(Docket No. 8-6 at 19-20). The trial court register of actions submitted as an exhibit to Respondents' Answer reflects that the affidavit was filed on March 13, 2015. (Docket No. 20-1 at 2).

Mr. Eaves states in his Reply that "there is a difference between the affidavit for an arrest warrant and an affidavit with a complaint and information," (Docket No. 22 at 5), and refers to his argument in his appellate reply brief that "[t]he People are in error that the trial court used the warrant affidavit to establish probable cause to initiate criminal proceedings. Otherwise the record would reflect that the court found probable cause based on the warrant affidavit." (Docket No. 8-5 at 17-18). However, Mr. Eaves' second claim is that his Fifth Amendment rights were violated because the trial court accepted the criminal complaint and information without a supporting affidavit. The Court of Appeals rejected this claim because the trial court record shows that an affidavit supporting the complaint and information was, in fact, filed on March 13, 2015. Mr. Eaves has failed to show that the Court of Appeals' finding that the record refutes the claim "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)(2). Claim Two fails on that basis.

C. Claim Three

In Claim Three, Mr. Eaves contends that his Sixth Amendment rights were violated when the trial court summarily denied his motions to dismiss based on speedy trial violations. The Colorado Court of Appeals addressed and resolved this claim as follows:

> Eaves next contends that the trial court erred in applying the speedy trial statute. We are not persuaded.
>
> 1. Additional Factual Background
>
> On July 15, 2015, Eaves pleaded not guilty, so, pursuant to the speedy trial statute, his speedy trial deadline was January 15, 2016. § 18-1-405(1), C.R.S. 2017 (trial must take place within six months "from the date of the entry of a plea of not guilty"). The trial court originally scheduled trial for December 7, 2015.
>
> On November 30, 2015, Eaves requested that the trial court issue subpoenas for twenty-one witnesses to appear at trial, which was scheduled to begin just eight days later.
>
> On December 3, 2015, Eaves' advisory counsel, Eric Anaya, notified the court that he had represented one of the witnesses who Eaves intended to call at trial. There is no indication from the record that Anaya knew of the conflict prior to November 30 when Eaves filed his request for a subpoena of Anaya's client.
>
> > [fn. 7] The witness whose subpoena caused the conflict was not a witness to the crime, but instead an inmate at the jail who had conversations with Eaves while he was in custody awaiting trial. Eaves intended to call the witness to impeach the testimony of a different jailhouse informant whom the prosecution had endorsed.
>
> As a result of the conflict, the trial court permitted Anaya to withdraw as advisory defense counsel.

After discharging Anaya, the trial court told Eaves that if he wanted to keep the December 7 trial date, he would have to do so without advisory counsel, a plan to which Eaves initially agreed. The trial court then asked Eaves what his plans were for ensuring that the twenty-one witnesses would be properly served with the subpoenas and told Eaves it might be difficult to accomplish service with only four days remaining before trial. The trial court also told Eaves that if the trial was continued, it could not be reset before the January 2016 speedy trial deadline. After more discussion with the court, Eaves waived his speedy trial right and consented to a continuance. The court accepted Eaves' waiver of his speedy trial rights, granted the continuance, and appointed new advisory defense counsel. The case was continued to May 2016. Eaves accepted the new trial date.

2. Express Waiver

On appeal, Eaves argues that his express waiver should be disregarded because he was coerced into waiving his speedy trial right. According to Eaves, if he had been afforded the opportunity, he could have served the witnesses within the four days remaining before trial, and, therefore, the court did not have to continue the trial. This contention is flawed for several reasons.

First, Eaves expressly waived his right to a speedy trial and accepted the new trial date. Eaves certainly faced a difficult choice – proceed to trial as scheduled and risk not having properly subpoenaed his witnesses or waive his right to a speedy trial. But that difficult decision is not tantamount to coercion, particularly where the timing of the subpoenas vis-a-vis the trial was a problem of Eaves' own making. Eaves waited until eight days before trial to *start* the process for issuing subpoenas. The trial court alerted him that a possible consequence of waiting until the week before trial to issue subpoenas might be that his witnesses would not be served and he would have to go forward without that testimony. Having been advised of that risk, Eaves made a difficult but sensible choice to waive his speedy trial right and continue the trial. The record does not show that this decision was based on any coercion. Therefore, the trial court made no error with regard to Eaves' right to a speedy

trial.

> Second, the trial court did not tell Eaves that he could not proceed on December 7; instead, the trial court advised him of the risk in choosing to do so. Specifically, the trial court simply noted that it might be difficult for Eaves to accomplish service on twenty-one witnesses, in a manner that complied with the Rules of Criminal Procedure, in only four days. The challenge the court noted was real, and alerting Eaves to the difficulties he faced was not coercive.
>
> Third, there was nothing coercive about the court reminding Eaves that it was his responsibility to issue the subpoenas. By electing to represent himself a defendant "subject[s] himself to the same rules, procedures, and substantive law applicable to a licensed attorney." *People v. Romero*, 694 P.2d 1256, 1266 (Colo. 1985). It was Eaves' responsibility to issue the subpoenas, not the court's, and there was nothing coercive about the court reminding Eaves of this fact.
>
> Eaves also argues that Anaya is at fault for causing him to waive his speedy trial right. Eaves contends that Anaya could have known of the conflict earlier, and thereby avoided the problem, if he had been more active as advisory counsel. This argument is unavailing because Anaya's responsibility was to "serv[e] as a resource available to assist the defendant with legal and procedural matters and to call the trial court's attention to matters favorable to the defendant." *Downy v. People*, 25 P.3d 1200, 1202 (Colo. 2001). Nothing required Anaya to assist in issuing the subpoenas or to discern that Eaves' intention to call an ancillary witness would create a conflict. Further, an advisory counsel can only assist a pro se defendant "if and when the defendant requests such assistance." *Id.* There is no indication from the record that Eaves ever requested Anaya's assistance with issuing the subpoenas. It was Eaves' responsibility to issue the subpoenas and his decision to waive his right to a speedy trial.

(Docket No. 8-6 at 20-25).

The Sixth Amendment provides that a defendant in a criminal case has a right to

a speedy trial.[1] The general rule is that the speedy trial right attaches when the defendant is arrested or indicted, whichever comes first. *United States v. Marion,* 404 U.S. 307, 320–21 (1971). The Supreme Court has adopted a four-part balancing test to determine whether a constitutional speedy trial violation has occurred. *See Barker v. Wingo*, 407 U.S. 514 (1972). The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his speedy trial rights, and (4) the prejudice to the defendant as a result of the delay. *See id.* at 530. No single factor is determinative; all four factors are related "and must be considered together with such other circumstances as may be relevant." *Id.* at 533. A delay that exceeds one year is sufficient to trigger the speedy trial analysis. *See Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992).

Here, the Colorado Court of Appeals' resolution of Claim Three is not contrary to the clearly established federal law set forth in *Barker.* The *Barker* analysis is triggered in this case because the delay between Mr. Eaves' arrest on March 13, 2015, and his trial on May 16, 2016, was just over one year. With respect to the first *Barker* factor, the Court examines "the extent to which [such] delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." *Jackson v. Ray,* 390 F.3d 1254, 1261 (10th Cir. 2004) (quotations omitted). "[T]he delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Barker,* 407 U.S. at 531. Mr. Eaves was not indicted for an

1 Respondents again argue that Mr. Eaves "did not even cite to the federal constitution or any federal law" in presenting this claim on appeal. (Docket No. 20 at 20). However, as the Court has previously noted, Mr. Eaves argued in his Amended Opening Brief on appeal that "[t]his review is for a speedy trial right violation under the Sixth Amendment." (Docket No. 8-2 at 33).

"ordinary street crime," but rather for the crimes of aggravated robbery as a crime of violence, theft, menacing, and possession of a weapon by a previous offender. The trial took place only one year and two months after Mr. Eaves' arrest. The Court concludes that the length of the delay in this case was tolerable, and thus that the first *Barker* factor does not weigh heavily against Respondents.

With respect to the second factor, the reason for the delay, the Court must ask "whether the government or the criminal defendant is more to blame for th[e] delay." *Doggett*, 505 U.S. at 651. "A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government" but "[a] more neutral reason such as negligence or overcrowded courts should be weighted less heavily" against the government. *Barker*, 407 U.S. at 531. "[A] valid delay, such as missing witnesses, should serve to justify appropriate delay." *Id.* Delays caused by the defense weigh against the defendant. *See Vermont v. Brillon*, 556 U.S. 81, 90 (2009). Here, the trial was delayed so that Mr. Eaves could properly subpoena witnesses, and the delay also allowed him to obtain new advisory counsel. The delay was not due to the government's negligence or any other acts or events attributable to the government. Accordingly, this factor weighs in favor of Respondents.

The third factor, whether the defendant asserted his speedy trial rights, also weighs in Respondents' favor, since Mr. Eaves expressly waived his speedy trial rights in order to properly subpoena his witnesses. The record reflects that the trial court explained to Mr. Eaves the dilemma he faced, and the choices that were available in light of that dilemma, namely, go to trial as scheduled on December 7 without advisory

counsel and with the risk that his witness subpoenas would not be served by that date, or continue the trial. Mr. Eaves expressly chose to waive his speedy trial rights and continue the trial so that he could obtain new advisory counsel and subpoena his witnesses. The record reveals no basis for finding that Eaves' waiver was coerced.

With respect to the fourth factor, the prejudice to the defendant as a result of the delay, the Supreme Court has identified three principal types of harm arising from the delay between formal accusation and trial: "oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the [accused's] defense will be impaired by dimming memories and loss of exculpatory evidence." *Doggett*, 505 U.S. at 654 (internal quotation marks omitted). Although "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify[,] . . . such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria." *Id.* at 655-56. Here, Mr. Eaves fails to allege any prejudice resulting from the delayed trial, and the Court's review of the record reveals none. As Respondents note, the continuance that Mr. Eaves requested and received benefitted, rather than prejudiced, him, because it allowed him time to subpoena his witnesses and obtain new advisory counsel. This factor favors Respondents.

As a result, Mr. Eaves has failed to show that the Colorado Court of Appeals' determination of Claim Three was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or that it (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). Claim Three fails on that basis.

D. Claim Four

In Claim Four, Mr. Eaves contends that his Fourteenth Amendment right to discovery was violated. The Colorado Court of Appeals summarized this claim as follows:

> Next, Eaves contends that the trial court erred in certain discovery rulings. Specifically, Eaves argues that he was entitled to the handwritten and voice-recorded notes that a detective made during his investigation and to AT&T records of GPS data.
>
> > [fn. 8] Eaves also makes reference to a "list of suspect's vehicles," but provides no argument related to this item in his opening brief. Accordingly, we do not address it. *People v. Wiseman*, 2017 COA 49M, ¶ 48 (issues presented without argument are waived).

(Docket No. 8-6 at 25).

1. Detective's Notes

The Colorado Court of Appeals first addressed Mr. Eaves' contentions regarding the police detective's notes:

> 1. The Detective's Notes
>
> There is no discovery violation for failing to provide an officer's handwritten notes when the notes were identical to the typewritten notes that were produced. *People v. Nunez*, 698 P.2d 1376, 1380 (Colo. App. 1984), *aff'd* 737 P.2d 422 (Colo. 1987). The same is true for voice recordings. *Cf. People v. Alonzi*, 40 Colo. App. 507, 512, 580 P.2d 1263, 1267 (1978) (holding that prosecutor's failure to disclose tape-recorded witness interviews was not a due process violation when the prosecution disclosed reports

> summarizing those interviews), *aff'd* 198 Colo. 160, 597 P.2d 560 (1979). Here, the detective testified that his handwritten and voice-recorded notes were identical to the typewritten notes that were provided. Because the prosecution provided Eaves with transcriptions of the detective's handwritten notes and recordings, there was no discovery violation.

(*Id.* at 25-26).

At a pre-trial hearing on November 13, 2015, Detective Jeremy Tidwell of the Colorado Springs Police Department, the lead detective on Mr. Eaves' case, testified as follows under questioning by the prosecution:

> Q. Have you done everything you could to try and comply with the defendant's requests?
>
> A. Yes, I have.
>
> Q. Let's talk about a couple of things you weren't able to provide. Specifically, the defendant asked for handwritten notes from you and Detective Gregory and other members of the Robbery Division. What do you do with your handwritten notes after you have dictated your report?
>
> A. Once the report is dictated and then transcribed and it comes back to me to review and approve before officially submitting it, once I've approved it, confirmed that it matches my notes accurately, I destroy the notes. There's no need in keeping them around because they're reflected in the case report.
>
> Q. And is that common CSPD practice?
>
> A. It is.
>
> Q. When is the only time that you have ever had to keep your handwritten notes?
>
> A. When we've received an order from the court for preservation of those notes.
>
> Q. And did we have one of those motions in this

particular case?

A. Not that I'm aware of, no.

Q. Was there anything, to the best of your knowledge, that was in your handwritten notes that wasn't reflected in your reports?

A. No.

Q. And, in fact, if there had been, would you have gone back and prepared a supplement?

A. Yes.

Q. Same thing with the Dictaphone, do you actually type up all of your reports or do you dictate them?

A. They're dictated and then they're transcribed by somebody else.

Q. And those Dictaphone recordings, are those kept in the ordinary course of business at CSPD, or what happens to them after the report is generated?

A. I don't know. My understanding is, is I don't know where they are stored, so I don't know that they are stored.

Q. But again, is there a preservation order in this case?

A. No.

Q. And, to the best of your knowledge, upon review of all of your reports, do they fairly and accurately reflect your recollection of what happened in these different instances?

A. Yes.

(Record ("Rec.") Transcript ("Tr.") 11/13/2015 at 44-46).

The clearly established federal law relevant to Mr. Eaves' claim concerning the police notes is found in *California v. Trombetta*, 467 U.S. 479 (1984), and *Arizona v.*

Youngblood, 488 U.S. 51 (1988). In *Trombetta*, the Supreme Court noted that, "[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." *Trombetta*, 467 U.S. at 488. Thus, a due process violation occurs when the state fails to preserve or destroys evidence that has "an exculpatory value that was apparent before the evidence was destroyed" and was "of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Id.* at 489. In *Youngblood*, the Supreme Court clarified that the Due Process Clause does not "impos[e] on the police an undifferentiated and absolute duty to retain and preserve all material that might be of conceivable evidentiary significance in a particular prosecution." *Youngblood*, 488 U.S. at 58. Instead, if the evidence is only potentially useful, i.e., "evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant," there is no due process violation unless the defendant proves the state acted in bad faith in destroying or failing to preserve the evidence. *Id.* at 57–58.

Detective Tidwell testified that the typed transcriptions that were produced to Mr. Eaves were identical to the handwritten originals and the Dictaphone recordings of the originals. Thus, the original notes, and the Dictaphone recordings of the notes, did not have "an exculpatory value that was apparent before the evidence was destroyed" and were not "of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 U.S. at 489. The Court of Appeals' determination that there was no discovery violation in the

prosecution's failure to produce the originals was not contrary to, or an unreasonable application of, the clearly established federal law, or 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).

2. AT&T GPS Data

The Colorado Court of Appeals next addressed Mr. Eaves' contentions regarding the AT&T GPS data:

> 2. GPS Data from AT&T
>
> Eaves also contends that he did not have an adequate opportunity to review AT&T records of GPS data. Those records were produced in electronic form, but because they were voluminous the prosecution did not print them. The prosecution, however, gave electronic copies of the records to Eaves' investigator and his advisory counsel on at least three occasions and also held an evidence viewing where Eaves could access those records.
>
> Because Eaves chose to represent himself, the exercise of his right to appear pro se "necessarily operates within certain practical limitations." *People v. Rice*, 40 Colo. App. 357, 360, 579 P.2d 647, 650 (1978). Eaves is correct that he did not have access to the electronic records while in jail, but him not having a computer was a practical limitation that accompanied his being in custody before trial. Under the circumstances here and based upon the accommodations that were made, not printing the AT&T records was not a discovery violation.

(Docket No. 8-6 at 26-27).

The prosecutor explained to the trial court that the AT&T GPS records were contained on digital media and were too voluminous to print out in their entirety, but that the records had been provided in electronic format to Mr. Eaves' initial appointed

counsel, to his advisory counsel, and to his court-appointed investigator, as well as to Mr. Eaves himself at an evidence viewing. (Rec. Tr. 4/22/16 at 33-34). The state appellate court determined that, under these circumstances, the government's failure to also print out the electronic records onto hard copies for Mr. Eaves did not constitute a discovery violation. Mr. Eaves has failed to establish that the appellate court's decision contradicts clearly established Supreme Court law or was based on an unreasonable determination of the facts in light of the evidence presented. Mr. Eaves does not cite any contradictory governing law set forth in Supreme Court cases, or any Supreme Court decision that addressed similar facts and reached a different result. *See Williams*, 529 U.S. at 405-06. He does not dispute the fact that the records were provided in electronic format to his attorney, his advisory counsel, and his investigator, and that he himself was able to view them at an evidence viewing. Mr. Eaves is not entitled to relief on Claim Four.

E. Claim Five

In Claim Five, Mr. Eaves asserts that his Sixth Amendment rights were violated when the trial court denied the admission of evidence, testimony, and witnesses on an alternate suspect defense. The Colorado Court of Appeals addressed and determined this claim as follows:

> Before trial, but after the trial court's deadline for filing motions, Eaves filed two motions to issue subpoenas for evidence related to Eaves' purported alternate suspects. The trial court quashed both subpoenas. Eaves contends this was error. A trial court's decision to quash a subpoena is reviewed for an abuse of discretion. *People v. Brothers*, 2013 CO 31, ¶ 19. A trial court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair, or is

based on a misapplication or misunderstanding of the law. *People v. Palmer*, 2018 COA 38, ¶ 12.

1. J.H. Subpoena

According to Eaves, J.H., the owner of the check-cashing business, matches the description of the individual seen tampering with the back door two days before the robbery. Based on this assertion, Eaves believed that J.H. committed the robbery in concert with A.T., an employee of the check-cashing business who was working during the robbery. In pursuit of this theory, Eaves issued a subpoena for various business records from J.H., including insurance claims, employee lists, and company policies.

Before issuing a subpoena to a third party, the court must find, among other requirements, that the request to issue the subpoena is made in good faith and is not intended as a general fishing expedition. *People v. Spykstra*, 234 P.3d 662, 669 (Colo. 2010). Here, the trial court determined that the subpoena to J.H. was a fishing expedition because Eaves did not state why he needed the requested information. On appeal, Eaves points to no reason why this decision was an abuse of discretion beyond the conclusory assertion that the trial court prevented him from presenting a complete defense.

But even if the trial court had not based its ruling on Eaves' lack of justification for the materials, the documents that Eaves sought lacked evidentiary value. A trial court may only issue a subpoena for a third party to produce documents if the materials are "evidentiary and relevant." *Id.* Evidence related to an alternate suspect is only relevant if the proponent can establish a nonspeculative connection between the suspect and the crime charged. *People v. Elmarr*, 2015 CO 53, ¶32. There is no nonspeculative connection between the business records that Eaves sought and the crimes charged. Accordingly, the trial court did not abuse its discretion by quashing Eaves' subpoena to J.H.

2. Subpoena to Eight Police Officers

Five days before trial, Eaves subpoenaed eight police officers who were not involved in investigating this case.

According to Eaves, the officers named in his subpoenas investigated an unrelated shooting that took place in another part of Colorado Springs on the day of the robbery. Apparently, that shooting involved a Nissan. Based on the coincidence that a Nissan was involved in both crimes,

> [fn. 9] According to the prosecutor's offer of proof, a neighbor who lived near the scene of the shooting owned a red Nissan, and the car was parked on the street when police arrived. But neither the owner of that car nor the car itself had anything to do with the shooting.

Eaves contended that the unidentified shooter in that other crime was the person who committed the robbery at the check-cashing business. He contends that the officers' testimony would show that police mixed up the facts they learned in the investigation of the robbery with the facts they learned while investigating the shooting. Quashing the eight subpoenas and excluding the testimony was not an abuse of discretion.

First, the Rules of Criminal Procedure require that an alternate suspect defense be disclosed to the prosecution at least thirty-five days before trial. *See* Crim. P. 16(II)(c). Eaves made no disclosure related to the unidentified shooter as an alternate suspect.

Second, the evidence was irrelevant. Again, evidence of an alternate suspect is only relevant if Eaves can establish a nonspeculative connection to the alternate suspect and the crime charged. *Elmarr*, ¶ 32. Eaves' justification for calling the officers was purely speculative.

Third, even if the evidence were relevant, the trial court still could have excluded the officer's testimony if the probative value of the evidence was substantially outweighed by the danger that the testimony would confuse the jury. CRE 403. The trial court ruled that the testimony of eight police officers, all of whom would testify about their investigation into an unrelated crime, would confuse the jury, and that such confusion substantially outweighed any probative value that evidence might have. We discern no abuse of discretion in that ruling. Accordingly, the trial court

did not err in quashing the subpoenas.

(Docket No. 8-6 at 29-31).

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment . . ., or in the Compulsory Process or Confrontation clauses of the Sixth Amendment . . ., the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citations and internal quotation marks omitted). That includes the right to present relevant evidence. *United States v. Scheffer,* 523 U.S. 303, 308 (1998). However, the constitutional right to present a complete defense does not provide "an unfettered right to offer evidence that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Montana v. Egelhoff,* 518 U.S. 37, 53 (1996). "[W]ell-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." *Holmes v. South Carolina*, 547 U.S. 319, 326 (2006); *see also Crane*, 476 U.S. at 689-90 ("the Constitution leaves to the judges who must make these decisions 'wide latitude' to exclude evidence that is 'repetitive . . ., only marginally relevant' or poses an undue risk of 'harassment, prejudice, [or] confusion of the issues.'"). As a result, "[o]nly rarely" has the Supreme Court "held that the right to present a complete defense was violated by the exclusion of defense evidence under a state rule of evidence." *Nevada v. Jackson,* 569 U.S. 505, 509 (2013).

Further, under clearly established Supreme Court law, a subpoena which is "not

intended to produce evidentiary materials but is merely a fishing expedition to see what may turn up" is invalid. *Bowman Dairy Co. v. United States*, 341 U.S. 214, 221 (1951). A subpoena may be quashed if the proponents fails to "clear three hurdles: (1) relevancy; (2) admissibility; [and] (3) specificity." *United States v. Nixon*, 418 U.S. 683, 700 (1974).

Here, the state courts determined that Mr. Eaves' subpoenas requested materials which were inadmissible under state rules of evidence. The Colorado Court of Appeals held that the trial court did not abuse its discretion in finding that the subpoena of business records from J.H. constituted a "fishing expedition" in contravention of state evidentiary rules, and sought materials which were not relevant under state law because there was no nonspeculative connection between the requested records and the crimes charged. It determined that the trial court similarly did not abuse its discretion in ruling that the subpoena of the eight police officers to testify about their investigation of an unrelated crime would confuse the jury, and that, under Rule 403 of the Colorado Rules of Evidence, such confusion would substantially outweigh any probative value it might have. Mr. Eaves has failed to demonstrate that the exclusion of the evidence pursuant to state rules of evidence was contrary to, or an unreasonable application of, clearly established federal law, or was based on an unreasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d). As such, Mr. Eaves is not entitled to relief with respect to Claim Five.

IV. Conclusion

In summary, the Court finds that Mr. Eaves is not entitled to relief on any of his

remaining claims. Accordingly, it is

ORDERED that the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket No. 1) is denied and this case is dismissed with prejudice. It is further

ORDERED that there is no basis on which to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

DATED: November 5, 2019.

BY THE COURT:

Christine M Arguello

CHRISTINE M. ARGUELLO
United States District Judge

Appendix A

16CA1557 Peo v Eaves 08-02-2018

COLORADO COURT OF APPEALS DATE FILED: August 2, 2018

Court of Appeals No. 16CA1557
El Paso County District Court No. 15CR1188
Honorable Jann P. Dubois, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Rodney D. Eaves,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE WELLING
Taubman and Bernard, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 2, 2018

Cynthia H. Coffman, Attorney General, Brian M. Lanni, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Rodney D. Eaves, Pro Se

Appendix B

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Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 13, 2018 CASE NUMBER: 2016CA1557
El Paso County 2015CR1188	
Plaintiff-Appellee: The People of the State of Colorado, v. **Defendant-Appellant:** Rodney D Eaves.	Court of Appeals Case Number: 2016CA1557
ORDER DENYING PETITION FOR REHEARING	

The **PETITION FOR REHEARING** filed in this appeal by:
Rodney D. Eaves, Defendant-Appellant

is **DENIED.**

Issuance of the Mandate is stayed until: October 12, 2018.

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, the stay shall remain in effect until disposition of the cause by that Court.

BY THE COURT
Taubman, J.
Bernard, J.
Welling, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-02619-CMA

Appendix C

RODNEY DOUGLAS EAVES,

Applicant,

v.

COLORADO DEPARTMENT OF CORRECTIONS, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FINAL JUDGMENT

Pursuant to and in accordance with the Order of Dismissal (Doc. # 32) entered by Christine M. Arguello, District Judge, on November 5, 2019, it is hereby

ORDERED that Judgment is entered in favor of Respondents Colorado Department of Corrections and The Attorney General of the State of Colorado and against Applicant Rodney Douglas Eaves.

DATED at Denver, Colorado, this 5 day of November, 2019.

FOR THE COURT
JEFFREY P. COLWELL, CLERK

By: s/S. West
S. West, Deputy Clerk