

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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Filed: May 01, 2020

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Mr. John S. Pallas  
Michigan Department of Attorney General  
P.O. Box 30217  
Lansing, MI 48909

Re: Case No. 19-1920, *Deshawn Colbert v. Sherry Burt*  
Originating Case No. : 2:17-cv-10012

Dear Mr. Colbert and Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Briston S. Mitchell  
Case Manager  
Direct Dial No. 513-564-7082

cc: Mr. David J. Weaver

Enclosure

Mandate to issue

**NOT RECOMMENDED FOR PUBLICATION**

No. 19-1920

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

May 01, 2020

DEBORAH S. HUNT, Clerk

DESHAWN COLBERT, )  
Petitioner-Appellant, )  
v. ) ON APPEAL FROM THE UNITED  
SHERRY L. BURT, ) STATES DISTRICT COURT FOR  
Respondent-Appellee. ) THE EASTERN DISTRICT OF  
 ) MICHIGAN  
 )

**O R D E R**

Before: SILER, DAUGTREY, and GIBBONS, Circuit Judges.

Deshawn Maurice Colbert, a Michigan prisoner proceeding pro se, appeals the district court's denial of his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On the evening of August 10, 2012, Colbert and his father, along with two other men, entered the home of Larry Evans in search of marijuana and money that they believed were there. Evans's son, Ehab Kelly, who was in the basement when the four men entered the house, called 911 after hearing a commotion upstairs. When the four men realized that police had arrived at the house, they ran from the home. Two officers caught up to Colbert as he ran from the house and found that his clothing was covered in what appeared to be blood. Officers who went inside the home found Evans lying on the floor after suffering a beating and a single gunshot wound to the head. They also found two handguns. After his arrest, Colbert was interviewed by police and

gave conflicting accounts of what had transpired. He eventually admitted to knowing all of the men who went to Evans's house and that his father was one of those men. He also confessed to knowing that one of the other men, Deven Nelson, was known as a "shooter" and had a gun that evening, and that Deven and his brother, Corey Nelson, "told him that they were going to the victim's house because 'this guy owed 'em money' and that they went there to 'get n\*\*\*\*\* some money, so everybody gonna get his money.'" *People v. Colbert*, No. 319452, 2015 WL 1227657, at \*1 (Mich. Ct. App. Mar. 17, 2015) (per curiam).

Colbert proceeded to a separate trial before a jury. His defense was that he was merely present at the scene and had no involvement in the robbery or murder. The jury ultimately convicted Colbert of armed robbery, *see* Mich. Comp. Laws § 750.529, and first-degree felony murder, *see* Mich. Comp. Laws § 750.316(1)(b). The trial court sentenced him to life imprisonment without the possibility of parole for the felony murder conviction and to 30 to 60 years' imprisonment for the armed robbery conviction.

On appeal, Colbert raised three claims: (1) the trial court violated his Confrontation Clause rights by allowing into evidence statements made by his father through the testimony of the detective who interviewed him; (2) trial counsel was ineffective for failing to object to the admission of his father's statements; and (3) the trial court erred by allowing the prosecutor to use his silence at the time of his arrest against him. *Colbert*, 2015 WL 1227657, at \*2. Because Colbert failed to object to the use of his father's statements or the alleged use of his silence at the time of his arrest against him, the Michigan Court of Appeals reviewed these claims for plain error. *Id.* First, the court found that, although the admission of Colbert's father's statements violated Colbert's confrontation rights, there was no plain error because there was "ample evidence" apart from his father's statements that established Colbert's involvement in the crimes. *Id.* at \*3. Second, the court rejected Colbert's related ineffective assistance claim, finding that Colbert failed to demonstrate that he was prejudiced by counsel's failure to object. *Id.* at \*4. Finally, the court found no plain or obvious error on the record with respect to Colbert's claim concerning his post-arrest silence, explaining that there was no evidence that Colbert was questioned by the officer or informed of his *Miranda*[v. Arizona, 384 U.S. 436 (1966)] rights or that he invoked his right to

remain silent. *Id.* at \*4-5. The Michigan Supreme Court denied Colbert's application for leave to appeal. *People v. Colbert*, 869 N.W.2d 601 (Mich. 2015) (mem.).

Colbert then filed a § 2254 petition in the district court, raising the same three claims that he raised on direct appeal. The district court concluded that all three claims lacked merit and that his Confrontation Clause and post-arrest-silence claims were also procedurally defaulted. The court subsequently granted Colbert a certificate of appealability on his claims, and Colbert now appeals.

We review a district court's decision to deny a habeas petition de novo. *Linscott v. Rose*, 436 F.3d 587, 590 (6th Cir. 2006). Habeas corpus review of procedurally defaulted claims "is barred unless the prisoner can demonstrate cause for the default and actual prejudice . . . or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). To determine whether a habeas petitioner procedurally defaulted a federal claim in state court, a federal court must consider whether: "(1) the petitioner failed to comply with a state procedural rule; (2) the state courts enforced the rule; [and] (3) the state procedural rule is an adequate and independent state ground for denying review of a federal constitutional claim." *Jalowiec v. Bradshaw*, 657 F.3d 293, 302 (6th Cir. 2011). In order to establish cause, a habeas corpus petitioner ordinarily must "show that some objective factor external to the defense" prevented the petitioner's compliance with a state procedural rule. *Murray v. Carrier*, 477 U.S. 478, 488 (1986). In certain circumstances, counsel's failure to preserve a claim for review in state court can serve as cause to excuse a procedural default. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000).

There is no dispute that Colbert failed to object to the admission of his father's statements and to the testimony concerning his post-arrest silence. Michigan's contemporaneous-objection rule is an adequate and independent ground for denying habeas review. *Taylor v. McKee*, 649 F.3d 446, 450–51 (6th Cir. 2011). This rule requires that a defendant object to an error at the time of trial; otherwise, the claim is waived and reviewed for plain error only. *Id.* at 450. The Michigan Court of Appeals enforced the contemporaneous-objection rule by reviewing these claims for plain error. *Colbert*, 2015 WL 1227657, at \*2; see *Williams v. Burt*, 949 F.3d 966, 973 (6th Cir. 2020).

Colbert offered no explanation for his failure to object to the testimony concerning his silence at the time he was arrested. Indeed, in his appellate brief, he argues only the merits of this claim. And he never argued in state court or in the district court that counsel was ineffective for failing to raise a contemporaneous objection.

Colbert did, however, argue that counsel was ineffective for failing to object to the admission of testimony about statements his father had made to law enforcement. To establish ineffective assistance of counsel, a defendant must show both that: (1) counsel's performance was deficient, i.e., that counsel's representation fell below an objective standard of reasonableness; and (2) the deficient performance resulted in prejudice to the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). “[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” *Id.* at 689 (internal quotation marks and citation omitted). The test for prejudice is whether “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

The Michigan Court of Appeals found that Colbert had established that trial counsel's failure to object to the admission of his father's statements to law enforcement fell below an objective standard of reasonableness because the detective's testimony summarizing his father's statements violated his rights under the Confrontation Clause. *Colbert*, 2015 WL 1227657, at \*4. But the court concluded that Colbert could not show prejudice. *Id.*

Colbert's claim concerned the testimony of Detective Brad Wise, who interviewed Colbert's father. Wise summarized his interview of Deshawn Colbert, Sr., stating that Colbert's father admitted to being at the scene with Colbert and to knowing what was happening at the time and stated that the Nelson brothers and Colbert were armed that night and that he drove to the house with Colbert to obtain marijuana “through force.” Because Colbert's father did not testify at trial, Colbert could not cross-examine him.

But even if counsel had objected to Wise's testimony and the evidence had been excluded, there was other evidence presented at trial to establish Colbert's involvement in the robbery and

the murder. Ehabb Kelly testified that, on the night of the robbery, he was in his room in the basement of the house and heard “people upstairs yelling ‘where the bag at?’” He then called the police and hid behind a cabinet in the basement. Kelly testified that about five to ten minutes later, he saw Colbert come down to the basement, walk around, and then walk back upstairs to warn the others that someone was downstairs. Kelly stated that two more people then came into the basement and one said, “Bitch ass n\*\*\*\*\*\*, come out before I shoot whole basement up.” After the police arrived, Colbert was seen running from the house and was eventually caught and handcuffed. During his interview with the police, Colbert admitted to having gone into the house with his father and the Nelson brothers. He stated that Deven Nelson was armed, was known for being a shooter, and was “tussling” with the victim. Colbert stated that the victim owed the Nelsons money and that they went there to retrieve the money from Evans. In addition, there was evidence that the victim’s blood was found on at least one of Colbert’s shoes, suggesting that he could have been near the victim at the time of the beating and/or shooting.

The state appellate court concluded that Colbert could not show that, but for counsel’s failure to object, “a different result would have been reasonably probable,” explaining that Colbert’s “assertion that trial counsel’s failure to object ‘effectively destroyed’ his ‘mere presence’ defense . . . ignores the substantial evidence of guilt adduced at trial.” *Id.* Because there was other evidence of Colbert’s guilt aside from his father’s statement, the state appellate court’s ruling on Colbert’s ineffective assistance claim was neither contrary to nor an unreasonable application of *Strickland*. See 28 U.S.C. § 2254(d)(1). His ineffective-assistance-of-counsel claim therefore cannot serve as cause to overcome the procedural default of his Confrontation Clause claim. See *Willis v. Smith*, 351 F.3d 741, 745 (6th Cir. 2003).

Finally, in an effort to overcome the procedural default of both his Confrontation Clause and post-arrest-silence claims, Colbert asserts that failure to consider the claims would result in a fundamental miscarriage of justice because he is actually innocent. “[P]risoners asserting [actual] innocence as a gateway to [procedurally] defaulted claims must establish that, in light of new evidence, ‘it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.’” *House v. Bell*, 547 U.S. 518, 536-37 (2006) (quoting *Schlup v. Delo*,

513 U.S. 298, 327 (1995)). A credible actual-innocence claim “requires [the] petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” *Schlup*, 513 U.S. at 324. Colbert points to no new evidence that establishes his innocence. Instead, he argues that he “has shown actual innocence by direct exclusion of DNA” and cites the testimony of Heather Goff, the forensic biologist who conducted the serology and DNA analyses in the investigation. Specifically, Colbert points to Goff’s testimony that no DNA from the victim was found on Colbert’s jacket, jeans, shirt, boxers, or tank top. And although contradicted by the record, Colbert insists that the victim’s blood was not found on his shoe. Aside from the fact that this evidence—or lack thereof—is not new, the lack of the victim’s DNA on items of Colbert’s clothing other than his shoe does not establish that no reasonable juror would have found him guilty. Indeed, in the face of this evidence, the jury found him guilty.

Colbert has failed to overcome the procedural default of his Confrontation Clause and post-arrest-silence claims. Accordingly, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DESHAWN COLBERT,  
#728086,

Petitioner,

Civil Action No. 17-cv-10012

vs.

HON. BERNARD A. FRIEDMAN

MARK MCCULLICK,

Respondent.

**JUDGMENT**

The Court has issued an opinion and order in this matter denying petitioner's application for a writ of habeas corpus. Accordingly,

IT IS ORDERED AND ADJUDGED that judgment be and is hereby granted for respondent and against petitioner.

DAVID J. WEAVER  
CLERK OF COURT

By: Johnetta M. Curry-Williams  
Deputy Clerk

Approved: s/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
SENIOR U.S. DISTRICT JUDGE

Dated: July 23, 2019

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DESHAWN MAURICE COLBERT, JR.,  
#728086,

Petitioner,

vs.

Civil Action No. 17-cv-10012

HON. BERNARD A. FRIEDMAN

MARK McCULLICK,

Respondent.

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**OPINION AND ORDER DENYING PETITIONER'S APPLICATION FOR A WRIT OF  
HABEAS CORPUS, DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY,  
AND DENYING LEAVE TO PROCEED IN FORMA PAUPERIS**

Petitioner Deshawn Maurice Colbert, Jr., has filed a *pro se* habeas corpus petition challenging his state convictions for first-degree, felony murder, Mich. Comp. Laws § 750.316(1)(b), and armed robbery, Mich. Comp. Laws § 750.529. He argues as grounds for relief that his right of confrontation was violated when a non-testifying co-defendant's statement was admitted in evidence, his trial attorney was ineffective for failing to make a timely objection to the error, and his post-arrest silence was erroneously used against him as an admission of guilt and for impeachment purposes. Respondent argues that petitioner's claims are procedurally defaulted and meritless. The Court agrees. Accordingly, the petition will be denied.

**I. Background**

Petitioner was tried before a jury in Calhoun County Circuit Court where the testimony established that --

[i]n the evening hours of August 10, 2012, defendant and his father and two other cohorts entered the home of the victim, Larry Evans, to steal marijuana and/or money that they believed was inside the home. Ehab Kelly, one of the victim's sons, was downstairs when

the men entered the house. He called 911 because he heard a commotion upstairs. He testified that someone yelled “[w]here’s the bag” multiple times. Kelly, who hid behind a cabinet, testified that defendant came downstairs at one point, then went upstairs and told his cohorts that someone was hiding in the basement. Thereafter, defendant’s father and another accomplice went downstairs to look for him, with one man indicating that he would “shoot [the] whole basement up.” When the police arrived, defendant’s father hid in the basement underneath a bed.

When police officers were outside the house, they heard one of the occupants of the house demanding to know “where’s the bag[?]” Defendant and his accomplices ran from the home when they realized the police were there. Two of the officers chased and tackled defendant. Defendant’s clothes were covered in what appeared to be blood. Laboratory tests later revealed that the victim’s blood was on defendant’s tennis shoes. When the officers went inside the victim’s home, they found the victim on the floor, surrounded by blood. The victim had been the recipient of a savage beating and a single gunshot wound to the head. Officers found two handguns in the home; testing confirmed that the victim’s blood was on both handguns and that one of the handguns fired the bullet that killed the victim.

Officer Jim Blocker of the Battle Creek Police Department interviewed defendant shortly after his arrest. Defendant waived his *Miranda*<sup>1</sup> rights and proceeded to give conflicting versions of what occurred at the victim’s house. At first, he admitted to being at the victim’s house, but denied knowing any of the other individuals who were present. Later, when confronted with the fact that one of the other individuals at the house was his father, defendant admitted to knowing his father was at the house. Later still, despite initially denying knowing anyone else who was at the house or knowing why they were there, defendant eventually admitted that he knew all of the men who went to the victim’s house. He also admitted to knowing that one of the men, Deven Nelson, was known as a “shooter,” and that Deven had a gun that evening. He also admitted that, before going to the house, Deven and his brother, Corey Nelson, told him that they were going to the victim’s house because “this guy owed ‘em money” and that they went there to “get n\* \* \* \* \* some money, so everybody gonna get his money.”

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

*People v. Colbert*, No. 319452, 2015 WL 1227657, at \*1 (Mich. Ct. App. Mar. 17, 2015) (unpublished) (footnote in original).

Petitioner waived his right to testify and did not present any witnesses. His defense was that he was merely present during the crime.

On October 16, 2013, the jury found petitioner guilty of felony murder and armed robbery. On November 21, 2013, the trial court sentenced petitioner to life imprisonment for the murder and to a concurrent term of thirty to sixty years for the armed robbery. The Michigan Court of Appeals affirmed petitioner's convictions, *see id.*, and on September 29, 2015, the Michigan Supreme Court denied leave to appeal. *See People v. Colbert*, 498 Mich. 886; 869 N.W.2d 601 (2015). On January 3, 2017, petitioner filed his habeas corpus petition pursuant to 28 U.S.C. § 2254.

## **II. Standard of Review**

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides that

**(d)** [a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(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. When deciding “whether a state court’s decision ‘involved’ an unreasonable application of federal law or ‘was based on’ an unreasonable determination of fact,” a federal habeas court must “train its attention on the particular reasons—both legal and factual—why state courts rejected a state prisoner’s federal claims, and . . . give appropriate deference to that

decision.” *Wilson v. Sellers*, 138 S. Ct. 1188, 1191-92 (2018) (citations omitted). Further, “[w]hen the last state court to decide a prisoner’s federal claim explains its decision on the merits in a reasoned opinion, . . . a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable.” *Id.* at 1192.

The Michigan Court of Appeals reviewed petitioner’s claims for “plain error affecting substantial rights.” *Colbert*, 2015 WL 1227657, at \*2 and \*4. However, because the Court of Appeals also elaborated on the issues under federal law when addressing petitioner’s claims, its decision is entitled to deference under AEDPA. *Stewart v. Trierweiler*, 867 F.3d 633, 638 (6th Cir. 2017), *cert. den.*, 138 S. Ct. 1998 (2018).

AEDPA “imposes a ‘highly deferential standard for evaluating state-court rulings,’ *Lindh v. Murphy*, 521 U.S. 320, 333 n. 7 (1997), and ‘demands that state-court decisions be given the benefit of the doubt,’ *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (*per curiam*).” *Renico v. Lett*, 559 U.S. 766, 773 (2010). To succeed on habeas review of his claims, a state prisoner must show that the state court’s ruling on his claims “was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011). “[R]eview 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), and “state findings of fact are presumed to be correct unless the defendant can rebut the presumption by clear and convincing evidence.” *Baze v. Parker*, 371 F.3d 310, 318 (6th Cir. 2004) (citing 28 U.S.C. § 2254(e)(1)).

### III. Analysis

Petitioner’s first ground for relief alleges that his right to confront the witnesses against him was violated by his trial attorney’s ineffectiveness. This claim consists of two

components. Petitioner is alleging that his rights under the Confrontation Clause were violated and that he was denied the effective assistance of trial counsel because counsel did not object to the constitutional error.

#### **A. The Confrontation Clause**

Petitioner argues that his right of confrontation was violated when Detective Brad Wise testified about out-of-court statements made by petitioner's father, Deshawn Maurice Colbert, Sr. Mr. Colbert was one of petitioner's co-defendants, but the two of them were tried separately, and because Mr. Colbert did not testify at petitioner's trial, petitioner was unable to cross-examine him.

The Michigan Court of Appeals reviewed petitioner's claim for "plain error affecting substantial rights" because he did not object at trial to Detective Wise's testimony about Mr. Colbert's statements to Wise. The Court of Appeals went on to conclude that petitioner's right of confrontation was, in fact, violated, but that petitioner was not entitled to a reversal of his convictions because the alleged error did not affect the outcome of the trial or result in the conviction of an innocent person.

##### **1. Procedural Default Analysis**

Respondent argues that petitioner's claim is procedurally defaulted. In the habeas context, a procedural default is "a critical failure to comply with state procedural law." *Trest v. Cain*, 522 U.S. 87, 89 (1997). Under the doctrine of procedural default, "a federal court will not review the merits of [a state prisoner's] claims, including constitutional claims, that a state court declined to hear because the prisoner failed to abide by a state procedural rule." *Martinez v. Ryan*, 566 U.S. 1, 9 (2012). In this circuit,

“[a] habeas petitioner’s claim will be deemed procedurally defaulted if each of the following four factors is met: (1) the petitioner failed to comply with a state procedural rule; (2) the state courts enforced the rule; (3) the state procedural rule is an adequate and independent state ground for denying review of a federal constitutional claim; and (4) the petitioner has not shown cause and prejudice excusing the default.” *Jalowiec v. Bradshaw*, 657 F.3d 293, 302 (6th Cir. 2011)]. To determine whether a state procedural rule was applied to bar a habeas claim, [courts] look “to the last reasoned state court decision disposing of the claim.” *Guilmette v. Howes*, 624 F.3d 286, 291 (6th Cir. 2010) (en banc).

*Henderson v. Palmer*, 730 F.3d 554, 560 (6th Cir. 2013).

The first three procedural-default factors are easily satisfied here. First, Michigan’s contemporaneous-objection rule is a state procedural rule, which requires defendants in criminal cases to preserve their appellate claims by first objecting in the trial court. *People v. Carines*, 460 Mich. 750, 761-64; 597 N.W.2d 130, 137-38 (1999). Petitioner violated this rule by not objecting at trial to Detective Wise’s testimony regarding Mr. Colbert’s admissions. *See* 10/9/13 Trial Tr. at 62-65 (ECF No. 8-7, pp. 17-18, PageID. 596-97).

Second, the Michigan Court of Appeals reviewed petitioner’s claim for “plain error affecting substantial rights.” A state appellate court’s review of a claim for plain error constitutes enforcement of a procedural default. *Hinkle v. Randle*, 271 F.3d 239, 244 (6th Cir. 2001).

Third, because Michigan’s contemporaneous-objection rule is well established and normally enforced, it is an adequate and independent state ground for denying review of a federal constitutional claim. *Taylor v. McKee*, 649 F.3d 446, 450-51 (6th Cir. 2011).

The first three procedural-default factors are satisfied. Therefore, petitioner must show “cause” for his procedural error and resulting prejudice.

Petitioner alleges that his trial attorney was ineffective for failing to object to Detective Wise's testimony about his interview with petitioner's father. In certain circumstances, an attorney's failure to preserve a claim for review in state court can be "cause" to excuse a procedural default. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000) (citing *Murray v. Carrier*, 477 U.S. 478, 488-89 (1986)). "Not just any deficiency in counsel's performance will do, however; the assistance must have been so ineffective as to violate the Federal Constitution." *Id.* Petitioner must show that his trial "counsel's performance was deficient" and "that the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

As explained more fully below, trial counsel's allegedly deficient performance did not prejudice petitioner because there was substantial evidence of petitioner's guilt apart from his father's admissions to Detective Wise. Therefore, petitioner has not shown "cause" for his procedural default, and the Court need not determine whether the error under the Confrontation Clause prejudiced petitioner. *Smith v. Murray*, 477 U.S. 527, 533 (1986); *Simpson v. Jones*, 238 F.3d 399, 409 (6th Cir. 2000).

In the absence of "cause and prejudice," a habeas petitioner may pursue a procedurally defaulted claim if he can demonstrate that failure to consider his claim will result in a fundamental miscarriage of justice. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). "A fundamental miscarriage of justice results from the conviction of one who is 'actually innocent.'" *Lundgren v. Mitchell*, 440 F.3d 754, 764 (6th Cir. 2006) (citing *Carrier*, 477 U.S. at 496). "To be credible, [a claim of actual innocence] requires [the] petitioner to support his allegations of constitutional error with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial." *Schlup v. Delo*, 513 U.S. 298, 324 (1995).

Petitioner has not presented the court with any new evidence of actual innocence. Therefore, a miscarriage of justice would not occur if the Court failed to address the merits of petitioner's claim. The claim is procedurally defaulted because all four factors of a procedurally-defaulted claim are satisfied. The Court concludes in the following section that petitioner's claim also lacks substantive merit.

## **2. On the Merits**

The Sixth Amendment guarantees a defendant in a criminal prosecution "the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. This right is "applicable to the States through the Fourteenth Amendment," *Idaho v. Wright*, 497 U.S. 805, 813 (1990), and it "includes the right to cross-examine witnesses." *Richardson v. Marsh*, 481 U.S. 200, 206 (1987). The Supreme Court has held that the admission of a co-defendant's confession in a joint trial violates a petitioner's right of confrontation even if the trial court instructed the jury to use the codefendant's incriminating confession only against the codefendant. *See Bruton v. United States*, 391 U.S. 123, 126 (1968).

Detective Brad Wise testified at petitioner's trial that he interviewed Mr. Colbert and that Mr. Colbert made the following admissions during the interview: He (Mr. Colbert) drove to the victim's house with his son to obtain marijuana through the use of force; he was present at the victim's house with his son and knew what was going on at that particular date and at that particular time; the two Nelson boys had guns with them on that particular night; and he saw his own son with a gun on that date and at that time. *See* 10/9/13 Trial Tr. at 62-64 (ECF No. 8-7, p. 17, PageID 596). Because petitioner had no opportunity to cross-examine Mr. Colbert about his incriminating remarks to Detective Wise, the Michigan Court of Appeals reasonably concluded

that Detective Wise's testimony about Mr. Colbert's remarks violated petitioner's Sixth Amendment right to confront the witnesses against him.

Errors under the Confrontation Clause, however, are subject to harmless error analysis. *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986); *Vasquez v. Jones*, 496 F.3d 564, 574 (6th Cir. 2007). On habeas review, an error is considered harmless unless it had a "substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993).

The evidence against petitioner was substantial without the testimony about Mr. Colbert's admissions. During the criminal incident Ehabb Kelly heard people saying, "Where's the bag?" Kelly subsequently saw petitioner in the basement where Kelly was hiding, and he heard petitioner warn his cohorts that someone was in the basement. *See* 10/9/13 Trial Tr. at 31, 35-39 (ECF No. 8-7, pp. 9, 10-11, PageID. 588-90). The police later saw petitioner flee from the house, and they apprehended him a short distance away. *Id.* at 7-10 (ECF No. 8-7, pp. 3-4, PageID. 582-83). Petitioner subsequently admitted to a police officer that he was present when the Nelsons argued with the victim and that Deven Nelson "tussled" with the victim. Petitioner also informed the officer that Deven Nelson possessed a large gun in the house, that Deven was known for being a shooter, and that the victim owed the Nelsons some money. Additionally, Petitioner implied that the group had gone to the victim's home to obtain the money which was owed to them. *See* Attachment to Defendant-Appellant's Brief on Appeal at 19-24 (ECF No. 8-12, pp. 61-66, PageID. 746-51).<sup>2</sup>

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<sup>2</sup> A videotape of the officer's interview with petitioner was played for the jury, but the content of the interview was not transcribed as part of the transcript of trial. Consequently, the Court has had to rely on a transcription of the interview which was attached to petitioner's brief on appeal.

There was additional evidence that the victim's blood was present on at least one of petitioner's shoes. *See* 10/15/13 Trial Tr. at 19, 28-29, 31 (ECF No. 8-9, pp. 6, 8-9, PageID. 646, 648-49). This evidence suggests that petitioner stood near the victim during the commission of the crime and was not merely present.

Given the substantial evidence against petitioner, the Confrontation Clause error could not have had a "substantial and injurious effect or influence in determining the jury's verdict." Thus, the error was harmless, and petitioner is not entitled to relief on his claim. His claim lacks merit in addition to being procedurally defaulted.

#### **B. Trial Counsel**

Petitioner claims that his trial attorney was ineffective for failing to object when Detective Wise testified about Mr. Colbert's admissions. Petitioner asserts that this trial attorney's deficient performance prejudiced him because Mr. Colbert's statements to Detective Wise contradicted petitioner's defense that he was merely present during the commission of the crime.

The Michigan Court of Appeals concluded on review of petitioner's claim that, although defense counsel's performance fell below an objective standard of reasonableness, petitioner failed to show that a different result would have been reasonably probable but for counsel's deficient performance.

To prevail on his ineffective-assistance-of-counsel claim, petitioner must show "that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." *Strickland*, 466 U.S. at 687. The deficient performance prong "requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* "[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness. *Id.* at 688.

The prejudice prong “requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687. A defendant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. “The standards created by *Strickland* and § 2254(d) are both ‘highly deferential,’ and when the two apply in tandem, review is ‘doubly’ so.” *Richter*, 562 U.S. at 105 (internal and end citations omitted).

Even if the Court were to assume that defense counsel’s performance was deficient, the evidence against petitioner was substantial. *See supra*, section III.A.2. Thus, there is not a reasonable probability that the outcome of the trial would have been different had defense counsel objected to the constitutional error. As such, counsel’s failure to object did not prejudice petitioner, and the state appellate court’s rejection of petitioner’s claim was not contrary to, or an unreasonable application of, *Strickland*.

### **C. The Use of Petitioner’s Post-Arrest Silence**

Petitioner’s final ground for relief is that the prosecution violated his right to due process by using his post-arrest silence as an admission of guilt and to impeach his subsequent statements to a police officer that he was merely present at the scene of the crime. The Michigan Court of Appeals reviewed this claim for “plain error affecting substantial rights” and then declined to find any error that was plain or obvious. The Court of Appeals also concluded that, even if plain error occurred, petitioner was not entitled to a reversal of his convictions because the error did not affect the outcome of the trial.

## **1. Procedural Default**

Respondent argues on the basis of the state court's "plain error" review that petitioner's claim is procedurally defaulted. The Court agrees.

Michigan's contemporaneous-objection rule requires defendants in criminal cases to preserve their appellate claims by objecting on the same ground in the trial court. *People v. Buie*, 298 Mich. App. 50, 70-71; 825 N.W.2d 361, 374 (2012). Although defense counsel objected at trial when an officer testified about petitioner's silence at the time of his arrest, the objection was not based on petitioner's constitutional right to remain silent. Instead, defense counsel objected because the question had been asked and answered. See 10/8/13 Trial Tr. at 150-51 (ECF No. 8-6, p. 39, PageID. 565).

The Michigan Court of Appeals, moreover, relied on petitioner's failure to object on the same grounds at trial, and the contemporaneous-objection rule is an adequate and independent basis for denying relief. *Taylor*, 649 F.3d at 451. Furthermore, petitioner has not alleged "cause" for his failure to object, and he has not presented the Court with any new evidence of actual innocence. His claim is procedurally defaulted. The claim also lacks substantive merit for the following reasons.

## **2. On the Merits**

The Fifth Amendment to the United States Constitution states that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . ." U.S. Const. amend. V. The Supreme Court has held that, "[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444. In *Doyle v. Ohio*, 426 U.S. 610, 619 (1976), the Supreme Court held that the use

of defendant's silence at the time of arrest and after receiving *Miranda* warnings violates the Due Process Clause of the Fourteenth Amendment. "Doyle therefore 'bars the use against a criminal defendant of silence maintained *after receipt of governmental assurances.*'" *Hendrix v. Palmer*, 893 F.3d 906, 923 (6th Cir. 2018) (emphasis added) (quoting *Anderson v. Charles*, 447 U.S. 404, 408 (1980) (per curiam)).

The questions and answers in dispute here occurred during police officer Antony Gancer's testimony about how he and another officer apprehended petitioner. The prosecutor's questions and Officer Gancer's responses read as follows:

Q. [ the prosecutor] Okay, while you handcuffed [petitioner] did he say anything to you, either [to] you or in your presence?

A. [Officer Gancer] He just surrendered at that particular time.

Q. Did he tell you a man inside had been beaten or shot?

A. No, sir.

Q. Did he tell you that he was just there because it was a dope house, he was there to either smoke or buy dope?

A. No, sir.

Q. Did he tell you that his father was also located inside the home?

A. No, sir.

Q. Did he ever indicate who, if anyone, had beat the person that was contained within the home?

A. No, sir.

....

Q. And at no time when you were chasing him, securing him, or placing him in a patrol vehicle did he say anything to you?

A. No, sir.

10/8/13 Trial Tr. at 150-51 (ECF No. 8-6, p. 39, PageID. 565).

There is no indication in the record that petitioner was questioned by the police or advised of his constitutional rights when he was apprehended outside the victim's home late on August 10, 2012,<sup>3</sup> and the Supreme Court has not held that the use of a defendant's pre-*Miranda* silence violates the Constitution. *See Bond v. McQuiggan*, 506 F. App'x 493, 498 (6th Cir. 2012). The Sixth Circuit's ruling in *Combs v. Coyle*, 205 F.3d 269, 281 (6th Cir. 2000) – that the use of prearrest, pre-*Miranda* silence as substantive evidence of guilt violates the Fifth Amendment right against self-incrimination – is not controlling here because *Combs* is a pre-AEDPA case, which was decided under a de novo standard of review. *Jones v. Trombley*, 307 F. App'x 931, 934 n.1 (6th Cir. 2009). Therefore, the state court's rejection of petitioner's claim was not contrary to, or an unreasonable application of, any Supreme Court decision, and it would be improper to grant relief on petitioner's claim. *Bond*, 506 F. App'x at 498. Petitioner's claim lacks substantive merit in addition to being procedurally defaulted.

#### **IV. Conclusion and Order**

The state appellate court's rejection of petitioner's claims was not contrary to clearly established federal law, an unreasonable application of federal law, or an unreasonable determination of the facts. Accordingly,

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<sup>3</sup> Detective Jim Blocker testified that he advised petitioner of his constitutional rights and interviewed petitioner at the Battle Creek Police Department early on August 11, 2012. *See* 10/15/13 Trial Tr. at 48-53 (ECF No. 8-9, pp. 13-15, PageID. 653-55).

IT IS ORDERED that petitioner's application for a writ of habeas corpus is denied.

IT IS FURTHER ORDERED that a certificate of appealability shall not issue because reasonable jurists would not disagree with the Court's resolution of his constitutional claims or conclude that the issues presented are adequate to deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

IT IS FURTHER ORDERED that petitioner may not proceed *in forma pauperis* on appeal because an appeal could not be taken in good faith.

Dated: July 23, 2019  
Detroit, Michigan

s/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
SENIOR U.S. DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on July 23, 2019.

Deshawn Colbert, 728086  
MUSKEGON CORRECTIONAL FACILITY  
2400 S. SHERIDAN  
MUSKEGON, MI 49442

s/Johnetta M. Curry-Williams  
Case Manager

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

March 17, 2015

Plaintiff-Appellee,

v

DESHAWN MAURICE COLBERT, JR.,

No. 319452  
Calhoun Circuit Court  
LC No. 2012-003313-FC

Defendant-Appellant.

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Before: JANSEN, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Defendant, Deshawn Maurice Colbert, Jr., appeals as of right his jury trial convictions of armed robbery, MCL 750.529, and first-degree felony murder, MCL 750.316(1)(b). The trial court sentenced him as a second habitual offender, MCL 769.10, to concurrent terms of imprisonment of 30 to 60 years for the armed robbery conviction and life without the possibility of parole for the first-degree felony murder conviction. We affirm.

I. FACTUAL BACKGROUND

In the evening hours of August 10, 2012, defendant and his father and two other cohorts entered the home of the victim, Larry Evans, to steal marijuana and/or money that they believed was inside the home. Ehab Kelly, one of the victim's sons, was downstairs when the men entered the house. He called 911 because he heard a commotion upstairs. He testified that someone yelled "[w]here's the bag" multiple times. Kelly, who hid behind a cabinet, testified that defendant came downstairs at one point, then went upstairs and told his cohorts that someone was hiding in the basement. Thereafter, defendant's father and another accomplice went downstairs to look for him, with one man indicating that he would "shoot [the] whole basement up." When the police arrived, defendant's father hid in the basement underneath a bed.

When police officers were outside the house, they heard one of the occupants of the house demanding to know "where's the bag[?]" Defendant and his accomplices ran from the home when they realized the police were there. Two of the officers chased and tackled defendant. Defendant's clothes were covered in what appeared to be blood. Laboratory tests later revealed that the victim's blood was on defendant's tennis shoes. When the officers went inside the victim's home, they found the victim on the floor, surrounded by blood. The victim had been the recipient of a savage beating and a single gunshot wound to the head. Officers

found two handguns in the home; testing confirmed that the victim's blood was on both handguns and that one of the handguns fired the bullet that killed the victim.

Officer Jim Blocker of the Battle Creek Police Department interviewed defendant shortly after his arrest. Defendant waived his *Miranda*<sup>1</sup> rights and proceeded to give conflicting versions of what occurred at the victim's house. At first, he admitted to being at the victim's house, but denied knowing any of the other individuals who were present. Later, when confronted with the fact that one of the other individuals at the house was his father, defendant admitted to knowing his father was at the house. Later still, despite initially denying knowing anyone else who was at the house or knowing why they were there, defendant eventually admitted that he knew all of the men who went to the victim's house. He also admitted to knowing that one of the men, Deven Nelson, was known as a "shooter," and that Deven had a gun that evening. He also admitted that, before going to the house, Deven and his brother, Corey Nelson, told him that they were going to the victim's house because "this guy owed 'em money" and that they went there to "get n\*\*\*\*\* some money, so everybody gonna get his money."

## II. ANALYSIS

Defendant raises three arguments on appeal. First, he argues that the trial court erred in admitting statements made by his father, a non-testifying accomplice, through the testimony of the detective who interviewed him. Second, defendant argues that trial counsel was ineffective for failing to object to the admission of those statements. Third, he argues that the trial court erred in permitting the prosecutor to use his post-arrest silence against him.

### A. STANDARD OF REVIEW

Defendant did not object to the use of his father's statements or the alleged use of his silence against him; therefore we review these issues "for plain error affecting substantial rights." *People v Pipes*, 475 Mich 267, 270; 715 NW2d 290 (2006). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), citing *United States v Olano*, 507 US 725, 731-734; 113 S Ct 1770; 123 L Ed 2d 508 (1993). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.*, citing *Olano*, 507 US at 734. And, even if defendant satisfies this three-part test, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence.'" *Id.*, quoting *Olano*, 507 US at 736-737 (internal quotation marks omitted; alteration in original).

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Defendant failed to raise his assertion of ineffective assistance in either a motion for new trial or a motion for a *Ginther*<sup>2</sup> hearing. “Failure to move for a new trial or for a *Ginther* hearing ordinarily precludes review of the issue unless the appellate record contains sufficient detail to support the defendant’s claim.” *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 660; 620 NW2d 19 (2000). “This Court reviews unpreserved claims of ineffective assistance of counsel for errors apparent on the record.” *People v Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011).

## B. CONFRONTATION CLAUSE

Under the Confrontation Clause of the Sixth Amendment, a criminal defendant is guaranteed the right to confront the witnesses against him or her. *People v Dendel (On Second Remand)*, 289 Mich App 445, 452-453; 797 NW2d 645 (2010). “[T]he Sixth Amendment bars the admission of testimonial statements by a witness who does not appear at trial unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness.” *Id.* at 453, citing *Crawford v Washington*, 541 US 36, 53-54; 124 S Ct 1354; 158 L Ed 2d 177 (2004). “Statements taken by police officers in the course of interrogations are [ ] testimonial . . .” *Crawford*, 541 US at 52.

Defendant takes issue with the following exchange between the prosecutor and the detective who interviewed his father:

*Q.* Did you have the occasion to interview [defendant’s] father?

*A.* I did. . .

\* \* \*

*Q.* Did there come a time when he admitted being there with his son?

*A.* Yes.

*Q.* Did there come a time where admitted knowing what was going on at that particular date and time?

*A.* Yes.

*Q.* Did there come a time where he admitted or told you that the two Nelson boys had guns with them on that particular night?

*A.* Yes, he did.

*Q.* Did there come a time he indicated to you that he drove over to the house with his son?

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<sup>2</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

A. Yes.

Q. Did there come a time where he admitted to you why he and his son went over to a particular house?

A. Yes.

Q. Did there come a time where he admitted to you . . . the reason for going over there was to secure some marijuana?

A. Yes.

Q. By purchasing it or through force?

A. Through force.

Q. Did there come a time where he indicated to you that he saw his own son with a gun that particular date and times [sic]?

A. Yes, he did.

Defendant properly argues, and the prosecutor concedes, that the detective's testimony summarizing statements made by defendant's father, a non-testifying witness who was not subject to cross-examination, violated defendant's confrontation rights under the Sixth Amendment. Despite the existence of this error, we decline to reverse under plain error review because there was strong evidence of defendant's guilt apart from the statements of defendant's father. This was not a case, where, as defendant contends, the evidence merely placed him at the home at the time of the robbery and murder. Rather, there was ample evidence of defendant's involvement in the offenses. Defendant, by his own admission, went to the house to "get n\*\*\*\*\* some money, so everybody gonna get his money." Defendant went with Deven, whom defendant admitted was known as a "shooter." Despite initially denying that he knew the other men involved, one of whom was his father, defendant later admitted to knowing all of the men involved in the crimes. According to Kelly's testimony, defendant acted in concert with the men at the home. Kelly testified that defendant came downstairs, looked around, then told his cohorts that someone was downstairs. This prompted two of the other men to come downstairs and threaten to start shooting. In addition, there was evidence of defendant's involvement in the victim's death because defendant's shoes were covered in the victim's blood, and the rest of defendant's clothes tested positive for blood.

In light of the other evidence adduced, defendant cannot show "that the error affected the outcome of the lower court proceedings[,] or that it resulted in the conviction of a defendant who was actually innocent. See *Carines*, 460 Mich at 763. Defendant is not entitled to reversal.

### C. INEFFECTIVE ASSISTANCE

Defendant also argues that he is entitled to a new trial because trial counsel rendered ineffective assistance by not raising a timely objection to the above testimony. Although defendant has "show[n] that counsel's performance fell below an objective standard of

reasonableness[,]” he has not “show[n] that, but for counsel’s deficient performance, a different result would have been reasonably probable.” *People v Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011). Defendant’s assertion that trial counsel’s failure to object “effectively destroyed” his “mere presence” defense again ignores the substantial evidence of guilt adduced at trial.

#### D. POST-ARREST SILENCE

Defendant also argues that he was denied a fair trial when the prosecutor attempted to use his silence while being arrested both as an admission of guilt and to impeach his subsequent statements to officers that he was merely present at the scene of the robbery and murder. Defendant objected to a portion of the testimony he cites to on appeal, but he raised a ground different from that raised on appeal. “[A]n objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground.” *People v Bulmer*, 256 Mich App 33, 35; 662 NW2d 117 (2003). Accordingly, review is for plain error affecting substantial rights. *Pipes*, 475 Mich at 270.

Under *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), “a person taken into custody must be advised immediately that he has the right to remain silent, that anything he says may be used against him, and that he has a right to retained or appointed counsel before submitting to interrogation.” *Doyle v Ohio*, 426 US 610, 617; 96 S Ct 2240; 49 L Ed 2d 91 (1976). “As a general rule, if a person remains silent after being arrested and given *Miranda* warnings, that silence may not be used as evidence against that person.” *People v Shafier*, 483 Mich 205, 212; 768 NW2d 305 (2009). “Therefore, in general, prosecutorial references to a defendant’s post-arrest, post-*Miranda* silence violate a defendant’s due process rights under the Fourteenth Amendment of the United States Constitution.” *Id.* at 212-213.

Defendant takes issue with the following series of questions posed by the prosecutor and the answers given by the officer who arrested defendant:

*Q.* Okay, while you handcuffed [defendant] did he say anything to you, either you or in your presence?

*A.* He just surrendered at that particular time.

*Q.* Did he tell you a man inside had been beaten or shot?

*A.* No, sir.

*Q.* Did he tell you that he was just there because it was a dope house, he was there to either smoke or buy dope?

*A.* No, sir.

*Q.* Did he tell you that his father was also located inside the home?

*A.* No, sir.

*Q.* Did he ever indicate who, if anyone, had beat the person that was contained within the home?

*A.* No, sir.

Under plain error review, we decline to find the existence of an error that was plain or obvious. The record contains no evidence that defendant was questioned by the officer, that he was informed of his *Miranda* rights, or that he invoked his right to remain silent. Rather, on the record before us, the testimony simply reveals that defendant did not volunteer any information about the offenses that occurred in the home. While the questioning could have been inappropriate had the officer indicated that defendant, in response to custodial interrogation, remained silent, there is no indication of as much on the record. Where defendant bears the burden of demonstrating error, we cannot agree that the challenged testimony amounted to plain error.

Furthermore, even assuming the existence of plain error, we do not agree with defendant's assertion that he is entitled to reversal. As noted above, there was ample evidence of defendant's guilt in this case. In light of the evidence adduced, and the fact that the prosecutor did not reference defendant's silence when arguing to the jury, cf. *Shafier*, 483 Mich at 223 ("[I]n light of the prosecutor's extensive references to defendant's silence, the extensive connection of that silence to defendant's guilt, the inconsistencies in the prosecutor's case . . . and the nature of defendant's defense . . . the error was prejudicial"), defendant has failed to prove that the error, if any, affected the outcome of the lower court proceedings, *Carines*, 460 Mich at 763-764.

Affirmed.

/s/ Kathleen Jansen  
/s/ Patrick M. Meter  
/s/ Jane M. Beckering

Document: People v. Colbert, 2015 Mich. LEXIS 2161

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**People v. Colbert, 2015 Mich. LEXIS 2161**

**Copy Citation**

Supreme Court of Michigan

September 29, 2015, Decided

SC: 151588

**Reporter**

**2015 Mich. LEXIS 2161** \* | 498 Mich. 886 | 869 N.W.2d 601

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, DESHAWN MAURICE COLBERT, JR., Defendant-Appellant.

**Prior History:** [\*1] COA: 319452. Calhoun CC: 2012-003313-FC.

People v. Colbert, 2015 Mich. App. LEXIS 538 (Mich. Ct. App., Mar. 17, 2015)

**Judges:** Robert P. Young, Jr. ▼, Chief Justice. Stephen J. Markman ▼, Mary Beth Kelly ▼, Brian K. Zahra ▼, Bridget M. McCormack ▼, David F. Viviano ▼, Richard H. Bernstein ▼, Justices.

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**Opinion**

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**Order**

On order of the Court, the application for leave to appeal the March 17, 2015 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

**Content Type:** Cases

**Terms:** people v. Colbert 2015 mich. lexis 2161

**Narrow By:** Sources: Sources

**Date and Time:** Jun 20, 2020 11:31:09 a.m. CDT

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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Clerk

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Filed: May 26, 2020

Mr. David J. Weaver  
U.S. District Court  
for the Eastern District of Michigan  
231 W. Lafayette Boulevard  
Fifth Floor Theodore Levin U.S. Courthouse  
Detroit, MI 48226-0000

Re: Case No. 19-1920, *Deshawn Colbert v. Sherry Burt*  
Originating Case No. : 2:17-cv-10012

Dear Clerk,

Enclosed is a copy of the mandate filed in this case.

Sincerely yours,

s/Maddison R Edelbrock  
For Briston Mitchell

cc: Mr. Deshawn Colbert  
Mr. John S. Pallas

Enclosure

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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No: 19-1920

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Filed: May 26, 2020

DESHAWN COLBERT

Petitioner - Appellant

v.

SHERRY L. BURT

Respondent - Appellee

MANDATE

Pursuant to the court's disposition that was filed 05/01/2020 the mandate for this case hereby issues today.

COSTS: None

**19-1920**

Mr. Deshawn Colbert  
#728086  
Muskegon Correctional Facility  
2400 S. Sheridan Drive  
Muskegon, MI 49442

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