

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-3093

Maurice Walker

Petitioner - Appellant

v.

William Sperfslage

Defendant - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:19-cv-00185-RGE)

JUDGMENT

Before BENTON, SHEPHERD, and GRASZ, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed. The motion for discovery pursuant to Rule 6 and the motion for appointment of counsel are denied as moot.

January 03, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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Appellant

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Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
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ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 09, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MAURICE WALKER, SR.,

Petitioner,

v.

WILLIAM SPERFSLAGE,

Respondent.

No. 4:19-cv-00185-RGE

**ORDER DENYING
PETITION FOR WRIT
OF HABEAS CORPUS**

Petitioner Maurice Walker Sr. brings this petition for writ of habeas corpus under 28 U.S.C. § 2254, challenging two 2006 convictions for first-degree murder. Am. & Substituted Pet. 1, ECF No. 15; Pet. 2, ECF No. 1.

For the following reasons, the Court denies the petition for federal habeas corpus relief.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Iowa Court of Appeals set forth the facts underlying Walker's state court convictions:

At approximately 11:15 p.m. on April 12, 2005, Everett Koehler heard a scream and a series of popping sounds while he watched television in his apartment in Clinton, Iowa. The bodies of Renee Walker and her live-in boyfriend, Steven Kersey, were found the next day in one of the neighboring apartments. Renee's former husband, Maurice, was charged with two counts of first-degree murder.

At trial police investigators described a violent murder scene. Both Renee and Steven were shot multiple times at close range just inside the door of their apartment. Bags of groceries from their recent trip to the store lay strewn across the floor. A bloody ski mask was left on top of a kitchen drawer. Renee's blood was on the mask, and Maurice's DNA was present around the mouth of the mask.

Based on an analysis of bullet fragments, investigators concluded a Hi-Point .380 automatic pistol delivered the fatal gunshots. While the gun was never recovered, the State presented evidence that Maurice had previously owned a Hi-Point .380 automatic pistol. Even though he had filled out paperwork transferring ownership of the gun to Renee, he still had the box for the gun, and police discovered a discharged bullet casing in the basement of his home. A ballistics examination

found that the discharged bullet casing from his basement matched those found at the murder scene: the bullets had all been fired from the same gun.

The State also set forth contradicting statements made by Maurice shortly after the murders. The State presented evidence that Maurice purchased a ticket at a bus station in Chicago approximately twenty-five hours after the murders. Maurice did not immediately board the bus; instead, he left the station. Two hours later someone discovered his burning van on the side of the road. Shortly thereafter, Maurice returned to the bus station and rode a bus to Davenport. When he arrived in Davenport, Maurice told a friend that his van had caught on fire. However, later that same day, he told a police officer investigating that he had left his van in Chicago with a mechanic.

Prosecutors developed multiple motives for the murders. First, Maurice was the beneficiary of a million-dollar insurance policy on Renee's life. One month prior to the murder, he sent the insurance payment via overnight mail. Shortly thereafter, someone called to make sure the payment was received and then inquired as to how long the policy would be in effect. Second, Maurice and Renee's twenty-year-old daughter testified that Maurice did not like Steven Kersey. She also testified that Maurice was controlling and physically abusive towards Renee. Six months prior to the murder she witnessed Maurice striking Renee.

Direct Appeal Op., *Iowa v. Walker*, No. 06-1005, 2007 WL 2120229 (Iowa Ct. App. July 25, 2007), ECF No. 21-4 at 2-3.

Walker's defense was he was in Chicago at the time of the murders. During postconviction relief proceedings, the district court noted the State:

produced evidence of video footage of [Walker] entering a Chicago hotel at 4:15 p.m. [on the day of the murders] and leaving the hotel 40 minutes later and not returning until 2:30 a.m. Travel time between the hotel and Clinton, Iowa was shown to be roughly 2 ½ hours. [Walker's] return to the hotel was 3 ¼ hours after the time the scream and popping sounds were heard.... Also records of [Walker's] cell phone were presented to show possible locations and nearness to cell towers in Iowa during the time of his alibi.

Ruling on PCR, *Walker v. Iowa*, No. PCCV034422 (Clinton Cnty. Dist. Ct. Sept. 9, 2016), ECF No. 15-2 at 4.

A jury convicted Walker of two counts of first-degree murder. *Id.* at 1. His conviction was affirmed on direct appeal. *Id.* The Iowa Supreme Court denied Walker's application for further review. Order, *Iowa v. Walker*, No. 06-1005, 2007 WL 2120229 (Iowa Ct. App. Sept. 18, 2007),

ECF No. 21-6 at 1.

Walker filed a timely state postconviction relief action. Postconviction Relief Appeal Op. 2, *Walker v. Iowa*, No. 16-1796, 2019 WL 478192 (Iowa Ct. App. Feb. 6, 2019). The Iowa Court of Appeals affirmed the district court's determination Walker's trial counsel was not ineffective. *Id.* The Iowa Supreme Court denied Walker's application for further review. Order 1, *Walker v. Iowa*, No. 16-1796 (Iowa April 9, 2019), ECF No. 21-15.

Walker then filed a federal habeas petition pro se under 28 U.S.C. § 2254, alleging four grounds for relief. ECF No. 1 at 6–11. The Court dismissed some of Walker's claims based on *Iowa v. Heemstra*, 721 N.W. 2d 549 (Iowa 2006), as plainly without merit. The Court directed Walker to file an amended petition more specifically outlining his other claims for relief. Initial Review Order 1–4, ECF No. 5. In response, Walker filed an amended 78-page petition and requested appointment of counsel. ECF Nos. 7, 8, 9. The Court granted Walker's request for counsel. ECF No. 10. Counsel filed an amended petition raising 16 claims of ineffective assistance of counsel and an insufficiency of the evidence claim. ECF No. 15. The Court then directed Walker to show cause why all claims in Walker's petition, other than the three presented in petitions for further review to the Iowa Supreme Court, should not be dismissed for lack of exhaustion. ECF No. 16. Walker responded, consenting to dismissal of all but the claims presented in applications for further review. ECF No. 18.

Counsel for Walker has filed a brief in support of Walker's claims. Pet'r's Br., ECF No. 30. Walker has submitted a pro se brief. ECF No. 32. Respondent William Sperfslage has filed a brief in support of his position. Resp't's Br., ECF No. 37. Sperfslage and Walker have also submitted relevant state court documents. *See* ECF Nos. 15, 21, 36.

II. STANDARD OF REVIEW

A federal court may consider an application “for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). For claims properly before a federal court, a writ of habeas corpus shall be granted only if the prior 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(d) (1), (2).

“[A]n ‘unreasonable application of’ those holdings must be ‘objectively unreasonable,’ not merely wrong; even ‘clear error’ will not suffice.” *White v. Woodall*, 572 U.S. 415, 419 (2014) (quoting *Lockyer v. Andrade*, 538 U.S. 63, 75–76 (2003)). This “difficult to meet” standard requires a petitioner to demonstrate “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.” *Id.* at 419–20 (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)); *see also Woods v. Etherton*, 136 S. Ct. 1149, 1151 (2016) (per curiam) (reiterating standard).

Federal court review of underlying state court decisions is limited and deferential. *Fenstermaker v. Halvorson*, 920 F.3d 536, 540 (8th Cir. 2019). Except for certain kinds of error that require automatic reversal, even when a state petitioner’s federal rights are violated, “relief is appropriate only if the prosecution cannot demonstrate harmlessness.” *Davis v. Ayala*, 576 U.S. 257, 267 (2015). “Harmlessness” in the context of § 2254 means “the federal court

has grave doubt about whether a trial error of federal law had substantial and injurious effect or influence in determining the jury's verdict." *Id.* at 267–68 (internal citations omitted). This standard requires "more than a 'reasonable possibility' that the error was harmful." *Id.* at 268. These strict limitations reflect that habeas relief is granted sparingly, reserved for "extreme malfunctions in the state criminal justice systems" and "not as a means of error correction." *Greene v. Fisher*, 565 U.S. 34, 38 (2011).

III. DISCUSSION OF APPLICABLE LAW

Walker claims: 1) appellate counsel was ineffective for failing to object to the submission of burglary in the first degree as the predicate felony of felony murder; 2) the State failed to produce sufficient evidence that Walker was the person who shot and killed Steven Kersey and Renee Walker; and 3) counsel was ineffective in failing to object to jury instructions that allowed a general verdict for first-degree murder. ECF No. 30 at 10–20. Walker's first claim as originally filed alleged trial counsel erred by failing to challenge submission of burglary as a first-degree murder predicate. He then sought leave to clarify he was challenging *appellate* counsel's performance. Pet'r's Mot. to Amend, ECF No. 31. Sperfslage will not be prejudiced by clarification of the claim. The Court grants Walker's motion to amend. *See* Fed. R. Civ. P. 15 (a)(2) (directing court to freely grant motion to amend when justice so requires).

Sperfslage contends: 1) Walker's first claim is unexhausted, procedurally defaulted, failed in state court on adequate and independent state-law grounds, and falls short on both *Strickland* prongs; 2) the Iowa courts reasonably determined there was sufficient evidence to allow a rational jury to conclude Walker killed Renee Walker and Steven Kersey; and 3) the Iowa courts reasonably found counsel had no duty to object to the use of a general verdict. ECF No. 37 at 11, 19, 26. For the following reasons, the Court concludes Walker is not entitled to federal habeas relief.

A. Failure to Object to Submission of Burglary as Predicate for Felony Murder

Walker contends there was no evidence he committed a burglary and therefore no evidence to support submission of a felony-murder first-degree murder theory to the jury. He contends appellate counsel was ineffective for failing to raise this claim on direct appeal. ECF No. 30 at 10. Sperfslage contends this claim is unexhausted, procedurally defaulted, failed in state court on adequate and independent state-law grounds, and falls short on both *Strickland* prongs.

1. Exhaustion

Before federal courts may review a § 2254 petition, a petitioner must allege his state court conviction violates “the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). “[F]ederal habeas corpus relief does not lie for errors of state law.” *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) (quoting *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990)).

Federal habeas claims may be reviewed only after they have been exhausted in state court. 28 U.S.C. § 2254(b)(1)(A); *Shinn v. Ramirez*, 142 S. Ct. 1718, 1731–32 (2022). The purpose of exhaustion is to give “the State the ‘opportunity to pass upon and correct’ alleged violations of its prisoners’ federal rights.” *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (internal quotations omitted). “This rule of comity reduces friction between the state and federal court systems by avoiding the ‘unseem[li]ness’ of a federal district court’s overturning a state court conviction without the state courts having had an opportunity to correct the constitutional violation in the first instance.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). State courts must have at least one full and fair opportunity to resolve any federal issue. *Id.*

To obtain federal review, Walker must show he presented his claim (ineffective assistance of counsel for failure to challenge sufficiency of evidence of burglary as a predicate for first-degree felony-murder) through one full round of the Iowa appellate system. The record shows he did not.

In Walker's motion for acquittal, trial counsel argued the State had presented no "evidence that [Walker] did not have the right, license, or privilege to enter . . . the place of the murder." Trial Trans. 498:10–13, ECF No. 36-2 at 161. Walker did not renew this claim on direct appeal. Direct Appeal Br. 7–10, ECF No. 21-2 at 6–7. To fully exhaust this claim, Walker needed to present it in a petition for further review to the Iowa Supreme Court. *See Welch v. Lund*, 616 F.3d 756, 758 (8th Cir. 2020) (outlining steps required to exhaust a claim in Iowa courts prior to presenting claim in § 2254 proceeding).

Walker's pro se supplemental application for further review (filed after the Iowa Court of Appeals denied him relief in postconviction proceedings) raised a slightly different issue than he raises now. Walker's application for further review contended the Iowa Court of Appeals erred in finding the trial court properly submitted burglary in the first-degree as a predicate for felony- murder. ECF No. 21-13 at 2. Walker's application for further review did not allege appellate counsel was ineffective for failing to pursue the issue on appeal. Walker therefore failed to exhaust this issue in state court. *See Beaulieu v. Minnesota*, 583 F. 3d 570, 575 (8th Cir. 2009) (explaining exhaustion doctrine requires petitioner to have presented claim for ineffective assistance of counsel as an independent claim).

2. Procedural default

If no state court remedy is available for an unexhausted claim, the claim is considered *technically* exhausted. *Shinn*, 142 S. Ct. at 1732. Federal courts generally decline to hear claims not presented to the state courts in accordance with the state's procedural rules. *Id.* Those claims are considered technically exhausted but procedurally defaulted. *Id.*

Walker's claim (ineffective assistance of counsel for failure to challenge sufficiency of evidence of burglary as a predicate for first-degree felony-murder) has not been fully presented to the Iowa courts. Walker has no remaining mechanism for raising the claim in state court. *See Iowa*

Code § 822.3 (setting three-year statute of limitations for postconviction relief proceedings). This claim is therefore procedurally defaulted. *C.f. Shinn*, 142 S. Ct. at 1732. A federal court may hear a procedurally defaulted claim for postconviction relief only if the petitioner shows “cause” for and “prejudice” from the procedural default. *Dorsey v. Vandergriff*, 30 F.4th 752, 755 (8th Cir. 2022). Walker presents no circumstances overcoming his procedural default of the issue.

3. Merits

Even if Walker had fairly presented the substance of this claim to the Iowa courts in compliance with exhaustion rules, the claim fails on the merits. Walker contends the verdict (because it may be based on burglary as the felony-murder predicate for first-degree murder) is not supported by substantial evidence. He contends his direct appeal attorney was ineffective for not arguing there was insufficient evidence to support submitting burglary as a predicate offense for first-degree murder.

To demonstrate ineffective assistance of counsel under the Sixth Amendment to the United States Constitution, a petitioner must show: 1) counsel’s representation was deficient, and 2) the deficiency was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The first prong is established when a petitioner shows counsel’s performance fell below an objective standard of reasonableness. *Id.* at 687–88. Prejudice is demonstrated with “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. Review of ineffective assistance of counsel claims in § 2254 actions is “doubly deferential.” *Cullen v. Pinholster*, 563 U.S. 170, 202 (2011). That is, “federal courts are to afford ‘both the state court and the defense attorney the benefit of the doubt.’” *Etherton*, 136 S. Ct. at 1151 (internal quotation omitted).

Walker fails to show either that his attorney's performance fell below an objective standard of reasonableness or that he suffered prejudice as a result.

Walker was charged with two counts of murder in the first degree, in violation of Iowa Code §§ 707.1 and 707.2(1), (2) (2005), for killing Renee Walker and Steven Kersey. *Walker*, 2019 WL 478192. Each count charged Walker with killing the victim "with malice aforethought either express or implied and willfully, deliberately, and with premeditation or while participating in a forcible felony, namely a burglary." *Id.* at *1. "By general verdicts, the jury convicted Walker of both counts of murder in the first degree following a 2006 trial." *Id.*

The felony-murder rule developed from a common-law doctrine "that any death resulting from the commission or attempted commission of a felony constitutes murder." *Iowa v. Tribble*, 790 N.W.2d 121, 124 (Iowa 2010). The Iowa legislature codified a limited version of the rule as part of the first-degree murder statute: "A person commits murder in the first degree when . . . [t]he person kills another person while participating in a forcible felony." Iowa Code § 707.2(1)(b) (2017); *Tribble*, 790 N.W.2d at 125. The Iowa legislature has designated both robbery and first-degree burglary as forcible felonies. *See* Iowa Code § 702.11(1); *Iowa v. Anai Kur*, 952 N.W.2d 896 (Iowa Ct. App. 2020).

The trial court instructed the jury it could convict Walker of first-degree murder if it found either he acted willfully, deliberately, premeditatedly, and with the specific intent to kill the victims or he killed the victims while participating in the crime of first-degree burglary. Jury Instructions 14 and 32, ECF No. 21-1 at 95; Iowa Code §§ 707.2(1)(a) (premeditated killing), 707.2(1)(b) (killing while participating in a forcible felony), 702.11 (providing "[a] 'forcible felony' is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree").

One alternative presented to the jury was that Walker committed the murders while burglarizing Renee Walker's residence. He contends there was no evidence to show he committed burglary and counsel erred in failing to challenge submission of burglary as a predicate for felony murder.

Under Iowa law, "[a]ny person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure . . . commits burglary." Iowa Code § 713.1. Additional elements elevate generic burglary to a forcible felony that can be the predicate for felony murder:

1. A person commits burglary in the first degree if, while perpetrating a burglary in or upon an occupied structure in which one or more persons are present, any of the following circumstances apply:

- ...
 - b. The person has possession of a dangerous weapon.
 - c. The person intentionally or recklessly inflicts bodily injury on any person.
- ...

Iowa Code § 713.3.

The prosecution presented substantial evidence from which a jury could determine Walker entered Renee Walker's residence without right or privilege to do so while possessing a dangerous weapon. The evidence also supported his entry and intentional or reckless infliction of bodily injury. Walker and Renee Walker were divorced; Renee Walker had moved out of her former home with Walker after the divorce; the divorce was not amicable; and Renee Walker lived with Steven Kersey after the divorce. The evidence showed Renee Walker and Steven Kersey were attacked late at night as they entered the apartment. The evidence was sufficient for a jury to infer Walker did not have the right to enter his ex-wife's apartment late at night and he entered the apartment without Renee Walker's permission. *See, e.g., Iowa v. Goodson*, 958 N.W.2d 791, 801 (Iowa 2021) (explaining the nature of the relationship between the defendant and the victim was critical to determining whether defendant entered the home without permission and with intent to

assault). Even if a person occasionally has permission to be in a home, he “may be convicted of burglary on proof that he broke and entered at a time or place beyond his authority.” *Iowa v. Peck*, 539 N.W.2d 170, 173 (Iowa 1995). The focus under the Iowa burglary statute “is on whether the defendant had any possessory or occupancy interest in the premises at the time of entry.” *Iowa v. Hagedorn*, 679 N.W.2d 666, 670 (Iowa 2004).

With this substantial evidence in support of Walker’s commission of burglary, Walker fails to show appellate counsel was ineffective for not contesting submission of the burglary alternative because: 1) he fails to show counsel’s performance fell below an objective standard of reasonableness and 2) he fails to show a reasonable probability the argument would have succeeded.

B. Sufficiency of Evidence

Walker contends the State failed to produce sufficient evidence that Walker was the person who shot and killed Renee Walker and Steven Kersey. Sperfslage contends the Iowa courts reasonably determined there was sufficient evidence to allow a rational jury to conclude Walker killed the two victims.

For sufficient evidence to support a criminal conviction, the Fourteenth Amendment’s Due Process clause requires “evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” *Jackson v. Virginia*, 443 U.S. 307, 316 (1979); *Brende v. Young*, 907 F.3d 1080 (8th Cir. 2018). When a habeas petitioner challenges his conviction on the sufficiency of the evidence, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson*, 443 U.S. at 319 (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972), *abrogated by Ramos v. Louisiana*, 140 S. Ct. 1390 (2020)). “*Jackson* leaves juries broad discretion in deciding what inferences to

draw from the evidence presented at trial, requiring only that jurors ‘draw reasonable inferences from basic facts to ultimate facts.’” *Coleman v. Johnson*, 566 U.S. 650, 655 (2012) (quoting *Jackson*, 443 U.S. at 319).

“Under *Jackson*, federal courts must look to state law for ‘the substantive elements of the criminal offense,’ but the minimum amount of evidence that the Due Process Clause requires to prove the offense is purely a matter of federal law.” *Coleman*, 566 U.S. at 655 (quoting *Jackson*, 443 U.S. at 324 n.16) (citation omitted). Once a jury makes a determination, “the only question under *Jackson* is whether that finding was so insupportable as to fall below the threshold of bare rationality.” *Id.* at 656; *see also United States v. Manning*, 738 F.3d 937, 944–45 (8th Cir. 2014). Under AEDPA’s “twice-deferential” standard of review, a “state-court decision rejecting a sufficiency challenge may not be overturned on federal habeas unless the ‘decision was objectively unreasonable.’” *Parker v. Matthews*, 567 U.S. 37, 43 (2012) (quoting *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam)); *see also Coleman*, 566 U.S. at 651 (“We have made clear that *Jackson* claims face a high bar in federal habeas proceedings because they are subject to two layers of judicial deference.”); *Nash v. Russell*, 807 F.3d 892, 897 (8th Cir. 2015) (applying *Jackson*’s “narrow standard of review,” explaining that, under AEDPA, a court “may grant relief only if [it] find[s] the [state court’s] conclusion that the evidence satisfied the *Jackson* sufficiency of the evidence standard both incorrect and unreasonable” and rejecting a habeas challenge to the sufficiency of the evidence (quotation marks and citation omitted)).

On direct appeal, Walker contended the State failed to produce sufficient evidence that he was the person who shot Renee Walker and Steven Kersey. He argued the evidence “is insufficient to establish guilt beyond a reasonable doubt due to the fact that all of the testimony establishes that Maurice Walker was not present when the murders occurred.” *Walker*, 2007 WL 2120229 at *2. Walker claimed “the State failed to rebut his alibi defense.” *Id.*

The Iowa Court of Appeals rejected his claim, outlining substantial evidence in the record to disprove Walker's alibi defense. *Id.*

On the morning of the murder, Maurice drove to Chicago with an acquaintance from his church. Maurice dropped off this acquaintance and went to a hotel by himself. Surveillance videos at the hotel show that Maurice checked into the hotel at approximately 4:15 p.m. He left the hotel approximately forty minutes later. He did not return to the hotel until approximately 2:30 a.m. The travel time between the hotel and Clinton, Iowa, is roughly two and one-half hours. Based on this evidence, it is clear that Maurice had the ability to drive to Renee's apartment in Clinton before Everett Koehler heard the scream and popping noises at 11:15 p.m. Likewise, Maurice did not return to his Chicago hotel room until three hours and fifteen minutes after Everett Koehler heard the suspicious noises. In total, neither his alibi defense nor the surveillance videos from his hotel prove that he could not have been in Clinton at the time of the murders.

Id.

The Court explained further:

Viewing the evidence in a light most favorable to the State, we conclude substantial evidence supports the first-degree murder convictions. First, Maurice's DNA was present on a bloody ski mask found at the scene of the crime. Second, he previously owned the same type of gun used to commit the murders. A discharged bullet casing found at his home matched those found at the scene of the murder. Finally, there were plausible motives for the murders—he was the beneficiary of Renee's substantial insurance policy, he was physically abusive towards Renee, and he disliked Steven Kersey. In total, we find this evidence sufficient to support the jury's conclusion that Maurice murdered both Renee and Steven.

Id. at *3.

The Iowa Court of Appeals was not wrong or objectively unreasonable in finding the evidence cited above was sufficient to support the jury's verdicts. Relief on this claim is denied.

C. Jury Instructions

Walker's final claim is counsel was ineffective for failing to object to jury instructions including a general verdict for first-degree murder. Sperfslage contends although Walker raised related claims regarding the use of a general verdict, he never clearly presented this claim to the

Iowa courts as a claim the verdict was not “unanimous.” Regardless, Sperfslage states the claim fails on the merits.

The Court is not required to decide the question of whether Walker’s various pro se or counselled state court filings would meet exhaustion requirements and may instead proceed to the merits. *Iromuanya v. Frakes*, 866 F.3d 872, 877 (8th Cir. 2017) (citing *Barrett v. Acevedo*, 169 F.3d 1155, 1162 (8th Cir. 1999) for the proposition that although the Court should usually address a procedural bar issue first, “judicial economy sometimes dictates reaching the merits if the merits are easily resolvable against” a petitioner if the procedural bar issues are complicated).

As outlined above, the jury was instructed they could find Walker guilty of first-degree murder based on alternative theories. The jury was not required to specify in the verdict form which basis supported the verdict. Walker contends counsel should have objected to jury instructions 14 and 32, defining first-degree murder. Those instructions permitted the jury to find Walker guilty of first-degree murder if during the killing Walker either:

- (a) Acted willfully, deliberately, or premeditatedly and with a specific intent to kill Renee Walker; or
- (b) Was participating in the offense of burglary in the first degree.

Jury Instructions 14 and 32, ECF No. 21-1 at 95.

A jury unanimously determined Walker was guilty of first-degree murder. They were not, however, required to state on the verdict form whether they all agreed on which first-degree murder alternative supported the verdict. Walker contends counsel was ineffective for not objecting to a general verdict.

Existing law approves of the use of general verdicts and counsel’s performance therefore was not deficient for failing to object. *See United States v. Smith*, 910 F.3d 1047, 1053 (8th Cir. 2018) (“Because the jury returned a general verdict of guilty, we must uphold the jury’s verdict if

the evidence is sufficient to support either of the charged theories.” (citation omitted)); *Griffin v. United States*, 502 U.S. 46, 56–57 (1991) (“[W]hen a jury returns a guilty verdict on an indictment charging several acts in the conjunctive. . . . [T]he verdict stands if the evidence is sufficient with respect to any one of the acts charged.”); *United States v. Villarreal*, 707 F.3d 942, 959 (8th Cir. 2013) (explaining that when jury’s general verdict of guilty does not show which theory or theories the jury found that the government proved beyond a reasonable doubt, the verdict will be upheld if the evidence is sufficient to support the conviction under any one of the alternative theories).

Despite the authorities cited above, Walker contends *Ramos v. Louisiana* supports his claim for relief. *See* 140 S. Ct. at 1397. In *Ramos*, the United States Supreme Court held the Sixth Amendment right to a jury trial, as incorporated against the States by the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense in both state and federal criminal trials. *Id.* The *Ramos* Court noted its decision had effect in only two states (Louisiana and Oregon), because the remaining states already required unanimous verdicts. *Id.* at 1406. *Ramos* did not invalidate use of general verdicts. Even if the *Ramos* holding could be extended to support Walker’s argument, the *Ramos* jury-unanimity rule does not apply retroactively on federal collateral review. *See Edwards v. Vannoy*, 141 S. Ct. 1547, 1553 (2021).

Counsel was not objectively unreasonable in failing to object to use of a general verdict. Relief on this claim is denied.

IV. CONCLUSION

For the reasons discussed above,

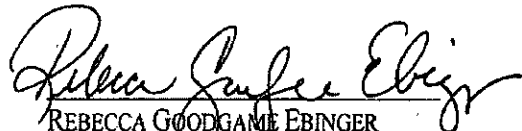
IT IS ORDERED that Petitioner Maurice Walker Sr.’s Motion to Amend, ECF No. 31, is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner Maurice Walker Sr.'s amended and substituted petition for federal habeas corpus relief, ECF No. 15, is **DENIED**. This case is **DISMISSED**.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States Courts, the district court must issue or deny a certificate of appealability when it enters a final order adverse to the petitioner. District courts have the authority to issue certificates of appealability under 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b). "A certificate of appealability may issue under [this section] only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Walker has not made a substantial showing of the denial of a constitutional right, therefore a certificate of appealability must be denied. Walker may request issuance of a certificate of appealability by a judge on the Eighth Circuit Court of Appeals. *See* Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated this 15th day of September, 2022.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE

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