APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 23-1363

[Filed August 29, 2023]

CIDNEY BOWDEAN INGRAM, Petitioner-Appellant,	)
v.	)
FREDEANE ARTIS, Warden, Respondent-Appellee.	)

O R D E R

Before: CLAY, Circuit Judge.

Cidney Bowdean Ingram, a Michigan prisoner represented by counsel, appeals the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Ingram's notice of appeal is construed as an application for a certificate of appealability.

A jury found Ingram guilty of first-degree murder and possessing a firearm during the commission of a felony. The convictions arose from an incident in which Ingram engaged in a verbal confrontation with several men near his apartment, then shot one of them to

death. Ingram claimed that he shot the man because he feared for the safety of himself and his family when the man entered his apartment. The trial court sentenced Ingram to an effective term of life in prison. The Michigan Court of Appeals affirmed the trial court's judgment, *People v. Ingram*, No. 315078, 2014 WL 2538495 (Mich. Ct. App. June 5, 2014) (per curiam), and the Michigan Supreme Court denied leave to appeal, *People v. Ingram*, 861 N.W.2d 891 (Mich. 2015) (mem.). Ingram unsuccessfully sought state post-conviction relief. *People v. Ingram*, 925 N.W.2d 859 (Mich. 2019) (mem.).

Ingram filed a § 2254 petition, claiming that his trial counsel rendered ineffective assistance by (1) not objecting when the trial court instructed the jury that Ingram had a duty to retreat, (2) not requesting a jury instruction that Ingram's porch was part of his home from which he had no duty to retreat, and (3) not requesting a jury instruction setting forth the elements of breaking and entering and home invasion, which were relevant to his claims of self-defense and defense of others. Ingram also claimed that his appellate counsel rendered ineffective assistance by failing to raise on direct appeal his issues concerning the jury instructions and trial counsel's ineffectiveness. The district court denied the petition on the merits and declined to issue a certificate of appealability.

To obtain a certificate of appealability, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a district court has rejected a constitutional claim on the merits, a petitioner must show that jurists of reason

would find it debatable whether the district court correctly resolved the claim under the Antiterrorism and Effective Death Penalty Act of 1996. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To prevail on an ineffective-assistance-of-counsel claim, a petitioner must establish that counsel's performance was deficient and that the deficiency resulted in prejudice, meaning that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Hill v. Mitchell*, 842 F.3d 910, 938–39 (6th Cir. 2016); *Shimel v. Warren*, 838 F.3d 685, 696 (6th Cir. 2016).

Ingram first claimed that his trial counsel rendered ineffective assistance by not objecting when the trial court instructed the jury that Ingram had a duty to retreat because he was not required to retreat from his home or porch under Michigan law. Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected this claim because the trial court did not instruct the jury that Ingram had a duty to retreat. Instead, the court instructed the jury that Ingram was not required to retreat in various circumstances, including if he was attacked in his own home or if he had a legal right to be where he was and he had not and was not engaged in the commission of a crime at the time deadly force was used. Thus, Ingram has not shown prejudice resulting from counsel's alleged error.

Ingram next claimed that his trial counsel rendered ineffective assistance by not requesting a jury instruction that Ingram's porch was part of his home

from which he had no duty to retreat. Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected this claim because Ingram has not shown prejudice resulting from counsel's alleged error. It is unlikely that giving the additional instruction would have affected the jury's verdict because the instructions that were given effectively informed the jury that Ingram was not required to retreat.

Ingram next claimed that his trial counsel rendered ineffective assistance by not requesting a jury instruction setting forth the elements of breaking and entering and home invasion, which were relevant to his claims of self-defense and defense of others. Under Michigan law, there is a rebuttable presumption that an individual who uses deadly force has an honest and reasonable belief that imminent death or great bodily harm will occur if the individual honestly and reasonably believes that the person against whom the force is used is in the process of breaking and entering a dwelling or committing a home invasion or has broken and entered a dwelling or committed a home invasion and is still in the dwelling. *See* Mich. Comp. Laws § 780.951(1). The trial court instructed the jury about the presumption, but Ingram contended that trial counsel should have requested an additional instruction that putting any part of one's body into a building is sufficient to establish the entry required for breaking and entering and home invasion based on Ingram's testimony that he shot the victim after he stepped into Ingram's home.

Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected this claim. Ingram has not shown a reasonable likelihood of a different verdict if the additional instruction was given because (1) he has not identified anything in the record suggesting that the jury was misled about the elements of breaking and entering or home invasion or that the jury concluded that the decedent's alleged entry into Ingram's apartment did not constitute one of those crimes, and (2) there was significant evidence undermining Ingram's testimony that the decedent was entering his home and so close that he was touching the gun when the shooting occurred, including that the cartridges ejected from Ingram's shotgun were in the grass next to the porch and the medical examiner testified that the decedent was probably two to six feet from the gun when shot. *See Ingram*, 2014 WL 2538495, at *2.

Finally, Ingram claimed that his appellate counsel rendered ineffective assistance by failing to raise on direct appeal his issues concerning the jury instructions and trial counsel's ineffectiveness. Reasonable jurists would not debate the district court's determination that the state courts reasonably rejected these claims because, for the reasons discussed, Ingram has not shown prejudice resulting from counsel's alleged errors. *See People v. Spaulding*, 957 N.W.2d 843, 853 (Mich. Ct. App. 2020) (explaining that unpreserved claims of instructional error are reviewed for plain error affecting substantial rights); *see also People v. Carines*, 597 N.W.2d 130, 138 (Mich. 1999) (explaining that an error affects substantial rights

where it affected the outcome of the lower court proceedings).

Accordingly, Ingram's application for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT
/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1363

[Filed August 29, 2023]

CIDNEY BOWDEAN INGRAM, Petitioner-Appellant,	)
v.	)
FREDEANE ARTIS, Warden, Respondent-Appellee.	)

Before: CLAY, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Cidney Bowdean Ingram for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT
/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 19-cv-12169

[Filed March 21, 2023]

Cidney Bowdean Ingram,	)
Petitioner,	)
	)
v.	)
	)
Fredeane Artis,[1]	)
Respondent.	)
	)

Judith E. Levy
United States District Judge

[1] The caption is amended to reflect the proper respondent in this case, the warden of the prison where Petitioner is currently incarcerated. *See Edwards v. Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); *see also* Rules Governing § 2254 Case, Rule 2(a), 28 U.S.C. foll. § 2254.

OPINION AND ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS [1], DENYING A CERTIFICATE OF APPEALABILITY, AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

Petitioner Cidney Bowdean Ingram, a state prisoner currently confined at the Thumb Correctional Facility in Lapeer, Michigan, has filed through counsel an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is challenging his St. Clair County, Michigan, convictions of first-degree premeditated murder, Mich. Comp. Laws § 750.316; and possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b. (ECF No. 1.) Petitioner raises three claims of ineffective assistance of trial and appellate counsel. *Id*. Respondent has filed an answer. (ECF No. 6.)

For the reasons set forth below, and because the state court's decision denying Petitioner's claims was not contrary to nor an unreasonable application of Supreme Court precedent, the petition for habeas corpus is denied. The Court also denies a certificate of appealability and denies leave to proceed on appeal *in forma pauperis*.

I. Background

The Michigan Court of Appeals summarized the facts of Petitioner's case as follows:

> Defendant and his girlfriend returned to their townhouse during the early morning hours of June 15, 2012. Defendant went inside the

townhouse and his girlfriend went to the parking lot to retrieve something from her car. When she returned, she informed defendant that some men in the parking lot made sexual comments to her. The defendant became angry. According to his girlfriend, defendant walked into the living room and retrieved a gun. Defendant then engaged the men in the parking lot, including the victim, in a verbal confrontation.

The argument ensued, and one of the men with the victim saw defendant come to the door with a gun. Another eyewitness testified that he did not see anything in the victim's hands. Defendant's girlfriend testified that defendant racked the gun and fired a warning shot while he was inside the apartment. She then saw defendant fire several other shots. The man with the victim heard a gunshot, which appeared to hit the victim in the chest. He then saw the victim turn and attempt to leave, but defendant came out of the apartment and shot the victim in the back. The victim died of his wounds.

While defendant admitted to verbally confronting the men, he claimed that the three men approached the apartment before he retrieved his gun and loaded it. Defendant testified that he fired a warning shot but the men kept coming toward the apartment. Defendant claimed that he backed up, but when the victim stepped inside of the apartment, Defendant shot him. Defendant claimed that the

> victim was so close that he felt the victim's body on the gun. He also claimed that the victim tried to enter the home again, which is when Defendant shot the victim in the chest. According to defendant, he fired the gun because the victim was trying to enter the apartment, and defendant feared that he or his family would be hurt.

People v. Ingram, No. 315078, 2014 WL 2538495, at *1 (Mich. Ct. App. June 5, 2014). A jury convicted Petitioner on charges of first-degree murder and felony-firearm. He was sentenced to a life term for the murder conviction and to a term of two years for the felony-firearm conviction. *Id*.

On direct appeal, Petitioner argued: (1) that his conviction was not supported by sufficient evidence and was against the great weight of the evidence; (2) that he was denied a fair trial due to prosecutorial misconduct; (3) that the trial court erred in excluding evidence pertaining to the victim's character; and (4) that the trial court erred in denying Petitioner's post-conviction request for an evidentiary hearing on the issue of juror misconduct. *Id*. at *1–*5. The court of appeals affirmed Petitioner's convictions, *id*. at *5; and the Michigan Supreme Court denied leave to appeal. *People v. Ingram*, 497 Mich. 1010 (2015).

Petitioner returned to the state trial court with a combined motion for an evidentiary hearing, a new trial, and relief from judgment pursuant to Michigan Court Rule 6.501, *et seq*. (*See* ECF No. 7-11.) The trial court denied the motion for a new trial. (*See* ECF No. 7-13.) After the court ordered and received the

prosecution's response to the motions, it denied the motions for an evidentiary hearing and relief from judgment, as well as a motion for reconsideration. (*See* ECF No. 1-1, PageID.71–74.) (ECF No. 7-18.) Petitioner sought leave to appeal the trial court's orders, which the Michigan Court of Appeals denied. (ECF No. 7-21, PageID.1491.) The Michigan Supreme Court also denied leave to appeal and a motion for reconsideration. *People v. Ingram*, 503 Mich. 1018 (2019); *People v. Ingram*, 504 Mich. 960 (2019).

Petitioner's timely application for a writ of habeas corpus followed. In it, he raises the same issues on which he based his post-conviction motions for collateral relief. Those issues are as follows:

I. The Michigan courts unreasonably applied clearly established federal law and unreasonably determined the facts in upholding Petitioner's convictions where Petitioner was denied the effective assistance of both trial and appellate counsel where: (a) trial counsel failed to object to a jury instruction that Petitioner had a duty to retreat; (b) trial counsel failed to request a jury instruction that defined the porch as part of the home from which Petitioner had no duty to retreat; and (c) appellate counsel failed to raise these issues on direct appeal. These failures individually and collectively amounted to constitutionally ineffective assistance of both trial and appellate counsel, and a denial of due process, in violation of U.S. Const., Amend. V, VI, XIV.

II. The Michigan courts unreasonably applied clearly established federal law and unreasonably determined the facts in upholding Petitioner's conviction where Petitioner was denied the effective assistance of both trial and appellate counsel where: (a) trial counsel failed to request jury instructions which, for purposes of explaining the duty to retreat, defined the offenses of breaking and entering and home invasion as offenses that included the element of a "breaking," which could be established by the entry of any part of a person's body into the dwelling; and (b) appellate counsel failed to raise this issue on direct appeal. These failures individually and collectively amounted to constitutionally ineffective assistance of both trial and appellate counsel, and a denial of due process, in violation of U.S. Const., Amend. V, VI, XIV.

III. Petitioner has met the requirements for the issuance of a writ of habeas corpus by demonstrating that both his trial attorney and his first appellate attorney were ineffective, and as a result, he suffered actual prejudice.

(*See* ECF No. 1.)

II. Legal Standard

A § 2254 habeas petition is governed by the heightened standard of review set forth in the Anti-Terrorism and Effective Death Penalty Act

(AEDPA). 28 U.S.C. § 2254. To obtain relief, habeas petitioners who raise claims previously adjudicated by state courts must "show that the relevant state-court 'decision' (1) 'was contrary to, or involved an unreasonable application of, clearly established federal law,' or (2) 'was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.'" *Wilson v. Sellers*, 138 S. Ct. 1188, 1191 (2018) (quoting 28 U.S.C. § 2254(d)). The focus of this standard "is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). "AEDPA thus imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (internal citations and quotation marks omitted).

Ultimately, "[a] state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). A state court's factual determinations are presumed correct on federal habeas review, unless rebutted by "clear and convincing evidence . . ." 28 U.S.C. § 2254(e)(1), Further, review is "limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

"[D]etermining whether a state court's decision resulted from an unreasonable legal or factual conclusion does not require that there be an opinion from the state court explaining the state court's reasoning." *Harrington*, 562 U.S. at 98. Where the state court's decisions provide no rationale, the burden remains on the habeas petitioner to demonstrate "there was no reasonable basis for the state court to deny relief." *Id.* However, when a state court has explained its reasoning, that is, "[w]here there has been one reasoned state judgment rejecting a federal claim," federal courts should presume that "later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground." *Wilson*, 138 S. Ct. at 1194 (citing *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991)). Accordingly, when the last state court to rule provides no basis for its ruling, "the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale" and apply *Ylst*'s presumption. *Id.* The "look through" rule applies whether the last reasoned state court opinion based its ruling on procedural default, *id.* at 1194 (citing *Ylst*, 501 U.S. at 803), or ruled on the merits. *Id.* at 1195 (citing *Premo v. Moore*, 562 U.S. 115, 123–133 (2011)) (other citation omitted).

However, "the stringent requirements of § 2254(d) apply only to claims that were 'adjudicated on the merits in state court proceedings.'" *Bies v. Sheldon*, 775 F.3d 386, 395 (6th Cir. 2014) (citing *Cullen*, 563 U.S. 170, 131 S. Ct. at 1391). If the state court did not adjudicate a claim on the merits, the court may examine the issue *de novo*. *Rompilla v. Beard*, 545 U.S.

374, 390 (2005) (citing *Wiggins v. Smith*, 539 U.S. 510, 534 (2003); *see also Bies*, 775 F.3d at 395 (citing *Cullen*, 563 U.S. 170, 131 S. Ct. at 1401; *Robinson v. Howes*, 663 F.3d 819, 822–23 (6th Cir. 2011)). In other words, under those circumstances, "the deferential standard of review mandated by the AEDPA does not apply." *Higgins v. Renico*, 470 F.3d 624, 630–31 (6th Cir. 2006).

III. Analysis

A. Introduction

Petitioner argues that his trial attorney was ineffective both for failing to object to one jury instruction (Claim I), and failing to request two others (Claims I and II). (ECF No. 1, PageID.11–12.) More specifically, in his first claim Petitioner argues that trial counsel should have objected to the erroneous jury instruction that Petitioner had a duty to retreat. (*Id*. at PageID.37.) He also asserts his attorney should have requested the jury be instructed that "the 'castle doctrine' . . . extends to an attached porch." (*Id*.) In his second claim, Petitioner argues his attorney was ineffective for failing to request an instruction on the elements of the offenses of breaking and entering and home invasion. (*Id*.) Such an instruction would have supported a rebuttable presumption of Petitioner's self-defense theory, in that the jury could find the victim had committed one of those crimes by placing his foot inside Petitioner's home, which is consistent with Petitioner's testimony. (*Id*. at PageID.37–38.)

B. Habeas Standard for Ineffective Assistance of Counsel

Habeas claims of ineffective assistance are evaluated under a "doubly deferential" standard. *Abby v. Howe*, 742 F.3d 221, 226 (6th Cir. 2014) (citing *Burt v. Titlow*, 571 U.S. 12, 15 (2013)). The first layer of deference is the deficient performance plus prejudice standard of *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). That is, a habeas petitioner must show "that counsel's representation fell below an objective standard of reasonableness[,]" and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Lafler v. Cooper*, 566 U.S. 156, 163 (2012) (citations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Williams v. Lafler*, 494 F. App'x 526, 532 (6th Cir. 2012) (per curiam) (quoting *Strickland*, 466 U.S. at 694)). *Strickland* requires a "'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'" *Abby*, 742 F.3d at 226 (citing *Strickland*, 466 U.S. at 689).

AEDPA provides the second layer of deference, under which a federal habeas court may "examine only whether the state court was reasonable in its determination that counsel's performance was adequate." *Abby*, 742 F.3d at 226 (citing *Burt*, 134 S. Ct. at 18). "The pivotal question is whether the state court's application of the *Strickland* standard was unreasonable," which "is different from asking whether

defense counsel's performance fell below *Strickland*'s standard." *Harrington*, 562 U.S. at 101.

C. Habeas Standard for Review of Jury Instructions

First, "[a] challenge to a jury instruction is not to be viewed in "artificial isolation," but rather must be considered within the context of the overall instructions and trial record as a whole." *Hanna v. Ishee*, 694 F.3d 596, 620-21 (6th Cir. 2012) (quoting *Cupp v. Naughten*, 414 U.S. 141, 147 (1973)). And in general, "[w]here the trial court instructs the jury in accordance with state law and sufficiently addresses the matters of law at issue, no error results and the petitioner is not entitled to habeas relief." *White v. Mitchell*, 431 F.3d 517, 534–35 (6th Cir. 2005) (citing *Sanders v. Freeman*, 221 F.3d 846, 860 (6th Cir. 2000)). Even where a jury instruction is alleged to violate state law, federal habeas relief is generally not available. *Ambrose v. Romanowski*, 621 F. App'x 808, 813 (6th Cir. 2015) (citing *Estelle v. McGuire*, 502 U.S. 62, 71–72 (1991); *Byrd v. Collins*, 209 F.3d 486, 527 (6th Cir. 2000)). Instead, courts must determine "whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that violates the Constitution." *Hanna*, 694 F.3d at 620 (citing *Estelle*, 502 U.S. at 72).

Under that standard, "a habeas petitioner's claimed error regarding 'jury instructions must be so egregious that [it] render[ed] the entire trial fundamentally unfair. Without such a showing, no constitutional violation is established and the petitioner is not entitled to relief.'" *Wade v. Timmerman-Cooper*, 785

F.3d 1059, 1078 (6th Cir. 2015) (quoting *White*, 431 F.3d at 533) (alterations in original). Put another way, the question on habeas review is "whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process." *Ambrose*, 621 F. App'x at 813 (quoting *Cupp*); *Estelle*, 502 U.S. at 72).

D. Application

Following the trial court's denial of Petitioner's motions for post-conviction relief, both state appellate courts denied leave to appeal the trial court's orders in standard form orders. (*See* ECF No. 7-21, PageID.1491); *People v. Ingram*, 503 Mich. 1018 (2019) (application for leave to appeal); *People v. Ingram*, 504 Mich. 960 (2019) (reconsideration). Where, as here, those courts did not explain their reasons for granting relief, this Court may "look through" their judgments and assume they relied on the trial court's rationale for denying relief. *Wilson*, 138 S. Ct. at 1194.

However, although the trial court issued the last reasoned opinion, *id.*, it did not address the merits of Petitioner's ineffective assistance claims against *Strickland*'s performance prong. Accordingly, the Court will review this issue *de novo*. *Rompilla*, 545 U.S. at 390. The deferential standard is slightly lower on de novo review. Even under this less deferential standard, however, Petitioner has not demonstrated his entitlement to relief.

First, Petitioner's claim that the jury was told Petitioner had a duty to retreat is incorrect. (*See* ECF No. 1, PageID.37, 39, 40.) The trial court's pertinent instructions were as follows:

> A person can use deadly force in self-defense only where it is necessary to do so. If the Defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the Defendant honestly and reasonably believed he needed to use deadly force in self-defense.
>
> However, a person is never to retreat[2] if attacked in his own home, nor if the person believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden, fierce, and violent attack.
>
> Further, a person is not required to retreat if the person has not or is not engaged in the commission of a crime at the time that the deadly force is used, and has a legal right to be where the person is at that time, and has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent death or great bodily harm to the person or another.

(ECF No. 7-7, PageID.1054–1055.)

Again, courts must review the jury instructions and trial record as a whole. *Hanna*, 694 F.3d at 620–21. The trial court expressly told the jury that a person has

---

[2] The applicable Michigan Model Criminal Jury Instruction, to which the instruction given is otherwise nearly identical, includes the word "required" after "never." *See* Mich. Model Crim. Jury Inst. 7.16 Duty to Retreat to Avoid Using Force or Deadly Force ("a person is never required to retreat if attacked . . .").

no duty to retreat in their own home or anywhere they have a legal right to be. Trial counsel's failure to object to these instructions was not objectively unreasonable.

Next, Petitioner argues counsel was ineffective for not requesting an instruction that the porch is part of the home from which a defendant has no duty to retreat. Again taking the instructions as a whole, the jury could reasonably have applied an instruction that *was* given: that Petitioner was not committing a crime on his own porch where he had a legal right to be, and therefore, Petitioner had no duty to retreat from his own front porch.

Petitioner's final claim involves an instruction that establishes a rebuttable presumption. The trial court provided the following instruction:

> If you find that the decedent was breaking and entering a dwelling or business, or committing home invasion . . . or the Defendant honestly and reasonably believed the decedent was engaged in any of the conduct just described, then you must presume that the Defendant had an honest and reasonable belief that imminent death or great bodily harm would occur.

(ECF No. 7-7, PageID.1055.) Petitioner argues that without an instruction on the elements of breaking and entering or home invasion, the jury was unaware that the insertion of "any part of [a person's] body . . . count[s] as an entry." *See, e.g.*, Model Crim. Jury Instruction 25.1, Breaking and Entering. Petitioner testified that the deceased victim stepped into his home, but, he argues, the jury did not know that was

sufficient for the victim to have committed those crimes. (ECF No. 1, PageID.58.)

The jury was instructed more generally on how to assess the credibility of a defendant's asserted belief that death or great bodily harm was imminent. It was told to "consider all the circumstances as they appeared to the Defendant at the time." (ECF No. 7-7, PageID.1053.) The breaking and entering/home invasion instruction was a more specific example of circumstances which would support a conclusion Petitioner reasonably feared death or great bodily harm. But the fact that this instruction was not given does not mean the jury was inadequately instructed on how to assess a defendant's credible fear justifying lethal self-defense.

The omission of the instructions Petitioner argues his counsel was ineffective for failing to request, was not "so egregious" that the trial was rendered "fundamentally unfair." *Wade*, 785 F.3d at 1078. Trial counsel's performance did not fall below objective standards of reasonableness.

The trial court did evaluate Petitioner's claims against *Strickland*'s prejudice prong, so AEDPA's "double deference" applies to its findings. The Court must determine "whether the state court's application of the *Strickland* standard was unreasonable . . ." *Harrington*, 562 U.S. at 101.

In its order denying relief, the trial court found Petitioner had not established the "good cause" or "actual prejudice" required for relief under Michigan Court Rule 6.508(D), when a defendant could have but

did not raise the issues on direct appeal. (ECF No. 1-1, PageID.74.) The court relied on the state court of appeals' sufficiency-of-the-evidence analysis, reasoning that it also resolved the question of prejudice. (*Id.*)

That is, in deciding that sufficient evidence supported Petitioner's convictions, "the Court of Appeals considered the law on self defense and the duty to retreat, including the premise that a porch is part of the home – the same law that Defendant argues should have been better instructed to the jury." (*Id.*) Had the appellate court addressed counsels' failure to request or object to specific jury instructions it likely would have found Petitioner's desired instructions would not have changed the outcome of the trial. (*Id.*) The trial court also noted that "appellate counsel's decision not to raise these [ineffective assistance and jury instruction] issues on appeal was objectively reasonable and not prejudicial to" Petitioner. (*Id.*)

The trial court's conclusion that Petitioner was not prejudiced by instructional error or his attorneys' related ineffectiveness was not unreasonable. The state courts' factual findings are presumed correct unless rebutted by clear and convincing evidence, 28 U.S.C. § 2254(e)(1), a burden Petitioner has not met.

Here, the Michigan Court of Appeals found a "lack of evidence that the victim threatened death or imminent great bodily harm," so Petitioner's use of force was not justifiable self-defense. *Ingram*, 2014 WL 2538495, at *3. It observed that Petitioner's testimony that he shot the victim when the latter attempted to enter the apartment, while he was leaning on the end of his gun, was undermined by evidence the victim was

shot from several feet away. *Id*. at *2. Yet other testimony supported the prosecution's theory that Petitioner fired at the victim because he felt "disrespected," not because he was in fear of death or grave bodily harm. *Id*.

Even if the jury had been instructed that a porch is part of a home from which a person has no duty to retreat, or that the crime of breaking and entering may be found when a perpetrator only minimally enters a dwelling, Petitioner has not demonstrated the reasonable likelihood of a different outcome absent his trial counsel's purported ineffectiveness. The state courts were not unreasonable in their denial of relief to Petitioner on this claim.

In addition, Petitioner's claim that his appellate attorney was ineffective also fails. Again, the "doubly deferential" standard of *Abby*, 742 F.3d at 226, applies, and the Court must determine whether the state court "objectively unreasonabl[y]" applied *Strickland*, 466 U.S. 668, to Petitioner's case. *Bell v. Cone*, 535 U.S. 685, 699 (2002).

A criminal defendant "does not have a constitutional right to have his counsel press nonfrivolous points if counsel decides as a matter of professional judgment not to press those points." *Williams v. Bagley*, 380 F.3d 932, 973 (6th Cir. 2004) (citation omitted); *see also Jones v. Barnes*, 463 U.S. 745, 750–51 (1983)). Appellate attorneys are not required to raise every "colorable" claim. *Richardson v. Palmer*, 941 F.3d 838, 858 (6th Cir. 2019) (citing *Jones*, 463 U.S. at 754). Because the Court has examined each of the claims in the petition and determined they lack

merit, Petitioner cannot demonstrate either deficient performance or prejudice in appellate counsel's failure to raise those claims. *Buell v. Mitchell*, 274 F.3d 337, 352 (6th Cir. 2001).

Petitioner is not entitled to habeas relief for his claims of ineffective assistance of counsel and instructional error.

E. Certificate of Appealability

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254. A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). But here, reasonable jurists could not "debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

The Court also denies Petitioner leave to appeal *in forma pauperis*, because any appeal would be frivolous. *Dell v. Straub*, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002).

IV. Conclusion and Order

For the reasons set forth above, the habeas petition is denied with prejudice.

It is further ordered that a certificate of appealability is denied, and Petitioner is denied leave to appeal *in forma pauperis*.

IT IS SO ORDERED.

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

Dated: March 21, 2023
Ann Arbor, Michigan

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 21, 2023.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 19-cv-12169

[Filed March 21, 2023]

Cidney Bowdean Ingram, Petitioner,	)
v.	)
Fredeane Artis, Respondent.	)

Judith E. Levy
United States District Judge

JUDGMENT

For the reasons stated in the opinion and order entered on today's date, it is ordered and adjudged that the case is dismissed with prejudice.

KINIKIA ESSIX
CLERK OF THE COURT

By: s/William Barkholz
DEPUTY COURT CLERK

Date: March 21, 2023

APPROVED:

s/Judith E. Levy
JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 23-1363

[Filed November 17, 2023]

CIDNEY BOWDEAN INGRAM, Petitioner-Appellant,	)
v.	)
FREDEANE ARTIS, Warden, Respondent-Appellee.	)

O R D E R

Before: BOGGS, McKEAGUE, and BLOOMEKATZ, Circuit Judges.

Cidney Bowdean Ingram, a Michigan prisoner, petitions for rehearing of our August 29, 2023, order denying his application for a certificate of appealability. He also moves for an extension of time to file his petition, but that motion is unnecessary because the petition was timely filed. We have reviewed the petition and conclude that this court did not overlook or misapprehend any point of law or fact in denying Ingram's application for a certificate of appealability. *See* Fed. R. App. P. 40(a)(2).

Accordingly, the motion to extend time is **DENIED** as unnecessary and the petition for rehearing is **DENIED**.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No: 2:19-cv-12169

[Filed April 19, 2023]

CIDNEY BOWDEAN INGRAM,
Petitioner,

vs.

FREDEANE ARTIS,
Respondent.

HON. JUDITH E. LEVY
United States District Judge

JOHN F. ROYAL (P27800)
Attorney for Petitioner

ANDREA M. CHRISTENSEN-BROWN (P71776)
Assistant Attorney General
Attorney for Respondent

NOTICE OF APPEAL

Notice is hereby given that Cidney Bowdean Ingram, Petitioner in the above-captioned case, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the final Judgment (ECF No. 13,

PageID.1831) dismissing his habeas corpus petition, entered in this action on the twenty-first day of March, 2023.

Respectfully submitted,

/s/ John F. Royal
JOHN F. ROYAL
/s/ JOHN F. ROYAL
Attorney for Petitioner
P. O. Box 393
Boyne City, MI 49712-0393
Phone: (313) 962-3738
E-mail: johnroyal@ameritech.net
State of Michigan Bar No. P27800

DATE: April 19, 2023.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Case No: 2:19-cv-12169

CIDNEY BOWDEAN INGRAM,
Petitioner,

vs.

FREDEANE ARTIS,
Respondent.

HON. JUDITH E. LEVY

JOHN F. ROYAL (P27800)
Attorney for Petitioner
P. O. Box 393
Boyne City, MI 49712-0393
Phone: (313) 962-3738
E-mail: johnroyal@ameritech.net

ANDREA M. CHRISTENSEN-BROWN (P71776)
Assistant Attorney General
Attorney for Respondent

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2023, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the Following: Andrea M. Christensen-Brown, Assistant Attorney General, Criminal Appellate Division.

Respectfully submitted

s/John F. Royal
John F. Royal (P27800)
Attorney for Petitioner
P. O. Box 393
Boyne City, MI 49712-0393
Phone: (313) 962-3738
E-mail: johnroyal@ameritech.net

Dated: April 19, 2023

APPENDIX G

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

No. 315078
St. Clair Circuit Court
LC No. 12-001654-FC

[Filed June 5, 2014]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

CIDNEY BOWDEAN INGRAM,
Defendant-Appellant.

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM

Defendant appeals as of right his jury trial convictions of first-degree murder, MCI 750.316, and possession of a firearm during the commission of a felony (felony-firearm), MCI 750.227b. Defendant was sentenced to life in prison for first-degree murder and two years for felony-firearm. We affirm.

I. FACTUAL BACKGROUND

Defendant and his girlfriend returned to their townhouse during the early morning hours of June 15, 2012. Defendant went inside the townhouse and his girlfriend went to the parking lot to retrieve something from her car. When she returned, she informed defendant that some men in the parking lot made sexual comments to her. The defendant became angry. According to his girlfriend, defendant walked into the living room and retrieved a gun. Defendant then engaged the men in the parking lot, including the victim, in a verbal confrontation.

The argument ensued, and one of the men with the victim saw defendant come to the door with a gun. Another eyewitness testified that he did not see anything in the victim's hands. Defendant's girlfriend testified that defendant racked the gun and fired a warning shot while he was inside the apartment. She then saw defendant fire several other shots. The man with the victim heard a gunshot, which appeared to hit the victim in the chest. He then saw the victim turn and attempt to leave, but defendant came out of the apartment and shot the victim in the back. The victim died of his wounds.

While defendant admitted to verbally confronting the men, he claimed that the three men approached the apartment before he retrieved his gun and loaded it. Defendant testified that he fired a warning shot but the men kept coming toward the apartment. Defendant claimed that he backed up, but when the victim stepped inside of the apartment, defendant shot him. Defendant claimed that the victim was so close that he

felt the victim's body on the gun. He also claimed that the victim tried to enter the home again, which is when defendant shot the victim in the chest. According to defendant, he fired the gun because the victim was trying to enter the apartment, and defendant feared that he or his family would be hurt.

The jury found defendant guilty of first degree murder and felony-firearm. He was sentenced to life imprisonment for first-degree murder, and two years for felony-firearm. Defendant now appeals.

II. SUFFICIENCY & GREAT WEIGHT

A. STANDARD OF REVIEW

Defendant first argues that there was insufficient evidence to sustain his first-degree murder conviction, and the verdict was against the great weight of the evidence. We review de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). "We examine the evidence in a light most favorable to the prosecution resolving all evidentiary conflicts in its favor, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt." *Id.* at 196.

We review for an abuse of discretion a trial court's determination that the verdict was not against the great weight of the evidence. *People v Kosik*, 303 Mich App 146, 154; 841 NW2d 906 (2013). An abuse of discretion exists if the trial court chooses an outcome falling outside the range of reasonable and principled outcomes. *Id.* "A trial court may grant a motion for a new trial based on the great weight of the evidence only

if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id.* (quotation marks and citation omitted).

B. ANALYSIS

"[T]o prove first-degree murder, the prosecutor was required to establish defendant's premeditated intent to kill. Premeditation and deliberation, for purposes of a first-degree murder conviction, require sufficient time to allow the defendant to take a second look.'" *People v Orr*, 275 Mich App 587, 591; 739 NW2d 385 (2007) (quotation marks and citation omitted). An individual may, however, use force to defend himself if he is not engaged in criminal activity and "[t]he individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual." MCL 780.972(1)(a); *People v Dupree*, 486 Mich 693, 708; 788 NW2d 399 (2010). A person attacked in his or her home has no duty to retreat, *People v Richardson*, 490 Mich 115, 120; 803 NW2d 302 (2011). Generally, a porch is part of a home. *Id.* at 121; *People v Riddle*, 467 Mich 116, 138; 649 NW2d 30 (2002). Moreover, "once the defendant injects the issue of self-defense and satisfies the initial burden of producing some evidence from which a jury could conclude that the elements necessary to establish a prima facie defense of self-defense exist, the prosecution bears the burden of proof to exclude the possibility that the killing was done in self-defense." *Dupree,* 486 Mich at 709-710 (quotation marks and citation omitted).

In the instant case, the evidence submitted demonstrates that defendant became angry after hearing that one of the men in the parking lot made a rude comment to his girlfriend. Immediately after hearing about the comment, defendant's girlfriend saw him retrieve a gun, open the front door, and yell at the three men. This evidence supports the prosecutor's theory that defendant shot the victim, not because he was in fear, but because he was angry about being "disrespected." Moreover, while one of the men testified that the victim might have pulled up his pants, this witness did not actually see this.

A police officer also testified that when a shotgun is fired, the cartridges are ejected to the right. The two shotgun cartridges in this case were found on a grassy area next to the porch, indicating that defendant was outside of the apartment door when he fired the shots. This evidence casts doubt on defendant's testimony that the victim was entering the home when shot. Moreover, the medical examiner testified that defendant was probably two to five feet from the victim when he shot him in the chest, and three to six feet from the victim when he shot him in the back. This contradicts defendant's testimony that he was so close to the victim that he could feel the victim's body on the other side of the gun.

Furthermore, an eyewitness testified that he did not see anything in the victim's hands, and a police officer testified that the only items retrieved from the victim's body were a cellular phone, an identification card, and credit cards. While defendant may not have had a duty to retreat, he was not permitted to use deadly force

unless he honestly and reasonably believed that deadly force was necessary to prevent death, or imminent, great bodily harm. *Richardson*, 490 Mich at 120-121. Given the lack of evidence that the victim threatened death or imminent great bodily harm, the evidence does not support a conclusion that defendant relied on justifiable self-defense.

Viewing the evidence in a light most favorable to the prosecution, we find that a reasonable jury could have concluded that defendant did not honestly and reasonably believe that deadly force was necessary to protect him or another from death or imminent great bodily harm. The evidence was sufficient to support defendant's conviction, and the verdict was not against the great weight of the evidence.[1]

III. PROSECUTORIAL MISCONDUCT & INEFFECTIVE ASSISTANCE

A. STANDARD OF REVIEW

Defendant next argues that the prosecutor committed misconduct when she elicited evidence that his nickname was "Psycho." Defendant further argues that defense counsel's failure to object constituted ineffective assistance of counsel. We disagree.

Because defendant failed to preserve his claim of prosecutorial misconduct, our review is limited to plain error affecting substantial rights. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003).

---

[1] To the extent that defendant also is challenging the denial of a directed verdict motion, for the same reasons articulated *supra*, we find no error.

"Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings, independent of defendant's innocence." *Id.* at 448-449. Moreover, "where a curative instruction could have alleviated any prejudicial effect we will not find error requiring reversal." *Id.* at 449.

Whether a defendant received effective assistance of counsel is a mixed question of fact and law, as a "trial court must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional right to. effective assistance of counsel." *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). A trial court's factual findings are reviewed for clear error, and questions of constitutional law are reviewed de novo. *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008).

B. ANALYSTS

When the prosecution asked two witnesses about the identity of those living in the residence in question, the witnesses referred to defendant by his nickname "Psycho." Contrary to defendant's assertions on appeal, the prosecution was not eliciting improper character evidence, but was verifying that the witness knew defendant by the name he went by, and that they were referring to the correct person. See *People v Griffis*, 218 Mich App 95, 99; 553 NW2d 642 (1996) ("because defendant was known to the prosecution's witnesses under various names, testimony concerning defendant's use of those names was necessary to show that defendant was the person to whom the testimony

pertained.") (Quotation marks and citations omitted). This testimony was not used to impeach the defendant, and any error in the fleeting references was harmless beyond a reasonable doubt MCR 2.613. We find no plain error affecting defendant's substantial rights. *Ackerman*, 257 Mich App at 448.

Furthermore, defendant has not overcome the strong presumption that defense counsel's failure to object was sound trial strategy. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007) ("[w]e will not second-guess matters of strategy or use the benefit of hindsight when assessing counsel's competence.") Even if this testimony was improper, "[c]ertainly there are times when it is better not to object and draw attention to an improper content." *People v Bahoda*, 448 Mich 261, 287 n 54; 531 NW2d 659 (1995). Instead of objecting to the testimony, defense counsel allowed defendant to explain that he was a rap music performer and that "Psycho Cid" was his stage name, which had nothing to do with his behavior in the community. In light of this sound trial strategy, defendant has not established ineffective assistance of counsel.

IV. ADMISSION OF EVIDENCE

A. STANDARD OF REVIEW

Defendant also contends that the trial court erred in excluding evidence of the victim's prior conviction for resisting and obstructing a police officer. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). Where the decision involves a preliminary question of law, such as whether a rule

of evidence precludes admissibility, the question is reviewed de novo. *Id.*

B. ANALYSIS

Pursuant to MRE 404(a)(2), "[e]vidence concerning the aggressive character of a homicide victim, even if the defendant was unaware of it at the time, is admissible in furtherance of a self-defense claim to prove that the victim was the probable aggressor." *People v Orlewicz*, 293 Mich App 96, 104; 809 NW2d 194 (2011) remanded on different grounds 493 Mich 916 (2012). "However, this type of character evidence may only be admitted in the form of reputation testimony, not by testimony regarding specific instances of conduct unless the testimony regarding those instances is independently admissible for some other reason, or where character is an essential element of a claim or defense." *Id.*; see also *People v Harris*, 458 Mich 310, 319; 583 NW2d 680 (1998); MRE 405.

Here, defendant contends that the trial court should have allowed evidence of the victim's prior conviction because the prosecution opened the door when it elicited testimony that the victim had not performed recent armed robberies and was planning to attend college. Contrary to defendant's assertions on appeal, this testimony did not open the door to the victim's prior conviction. Evidence that the victim planned to go to college did not portray him as nonviolent or implicate his prior conviction. Moreover, testimony regarding the victim's noninvolvement in robberies merely clarified that while defendant claimed to have bought the gun because of recent crime, that had

nothing to do with a specific threat from the victim. We find no error in the trial court's ruing.

V. JUROR MISCONDUCT

A. STANDARD OF REVIEW

Lastly, defendant argues that the trial court erred in failing to hold an evidentiary hearing on the issue of juror misconduct. A trial court's denial of a request for an evidentiary hearing is reviewed for an abuse of discretion. *Unger*, 278 Mich App at 216.

B. ANALYSIS

Jurors are presumed to be impartial, unless the contrary is shown. *People. v Miller*, 482 Mich 540, 550; 759 NW2d 850 (2008). "The burden is on the defendant to establish that the juror was not impartial or at least that the juror's impartiality is in reasonable doubt." *Id.* As the Michigan Supreme Court has explained:

> It is well established that not every instance of misconduct in a juror will require a new trial. The general principle underlying the cases is that the misconduct must be such as to affect the impartiality of the jury. . . . A new trial will not be granted for misconduct of the jury if no substantial harm was done thereby to the party seeking a new trial. . . . The misconduct must be such as to reasonably indicate that a fair and impartial trial was not had. [*Id.* at 551. (quotation marks, citations, and brackets omitted).]

In the instant case, defendant presented evidence that he and one of the jurors worked at the same company for a couple of months. Even accepting defendant's allegations as true, he has not shown, nor even alleged that the juror was biased or that there was any reason to believe the juror could not be impartial. The affidivit of a fellow coworker did not reveal the size of the company or the extent to which the juror was allegedly acquainted with defendant. Moreover, defendant has proffered no explanation for why he failed to inform the court that he knew or recognized the juror. See *People v Grissom*, 492 Mich 296, 320; 821 NW2d 50 (2012) (in order to satisfy the newly discovered evidence test, defendant must show that "using reasonable diligence, [he] could not have discovered and produced for evidence at trial[.]").

Under these circumstances, we find no abuse of discretion in the trial court's decision declining to hold an evidentiary hearing and denying defendant's motion.

VI. CONCLUSION

Defendant's first-degree murder conviction was supported by sufficient evidence, and the verdict was not against the great weight of the evidence. We also find no instances of prosecutorial misconduct, ineffective assistance of counsel, improperly admitted evidence, or juror misconduct warranting reversal or an evidentiary hearing, We affirm.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood

APPENDIX H

MICHIGAN SUPREME COURT
Lansing, Michigan

SC: 149676
COA: 315078
St. Clair CC: 12-001654-FC

[Filed April 28, 2015]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

CIDNEY BOWDEAN INGRAM,
Defendant-Appellant.

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

Order

On order of the Court, the application for leave to appeal the June 5, 2014 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.

[SEAL] I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 28, 2015 /s/ Larry S. Royster
Clerk

APPENDIX I

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF ST. CLAIR

Case No. 12-001654-FC

[Filed July 19, 2017]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

-vs-

CIDNEY BOWDEAN INGRAM,
Defendant.

OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT AND MOTION FOR EVIDENTIARY HEARING

At a session of the Circuit Court, held in the City of Port Huron, County of St. Clair, State of Michigan, on June 19, 2017.

This matter is before the Court on Defendant Cidney Bowdean Ingram's Motion for Relief from Judgment and Motion for Evidentiary Hearing, filed on July 27, 2016. Defendant filed a motion for new trial on the same date, which this Court denied in a separate order on September 8, 2016. This Court also entered an

order on September 8, 2016 directing the People's response to Defendant's Motion for Relief from Judgment and Motion for Evidentiary Hearing. The People filed a Response on April 19, 2017.

Defendant was convicted by jury of first-degree murder and felony firearm on December 5, 2012, and was sentenced to life in prison without parole. In his Motion for Relief from Judgment, Defendant now argues ineffective assistance of counsel regarding three alleged errors of his trial counsel: (1) failure to object to a jury instruction that Defendant had a duty to retreat, (2) failure to request a jury instruction that defined the porch as a part of the home from which Defendant had no duty to retreat, and (3) failure to request jury instruction that, for purposes of explaining the duty to retreat, defined Breaking and Entering and home invasion offenses to include the element of "breaking," which is established by entry of any part of a person's body into the dwelling. Defendant also argues that the ineffective assistance of his appellate counsel constitutes "good cause" for Defendant's failure to raise these issues on appeal, and that he suffered "actual prejudice" from the alleged ineffective assistance of trial counsel. Alternatively, he argues that his actual innocence provides grounds for this Court to waive the "good cause" requirement.

In their response, the People argue that Defendant does not meet his burden of proving ineffective assistance of appellate counsel as "good cause" for his failure to raise the issues in Defendant's Motion on appeal. They assert that Defendant has not offered analysis as to how the issues in his Motion were any

more likely to prevail than those raised by his appellate counsel on appeal, and has failed to provide an affidavit from appellate counsel regarding his strategy on appeal.

Further, they argue that even if appellate counsel had raised the issues in Defendant's Motion on appeal, he would have been unlikely to prevail. Regarding Defendant's underlying claims of ineffective assistance of trial counsel, the People argue that Defendant has failed to show how his trial attorney was ineffective regarding the jury instructions as given. They assert that the evidence presented at trial provided numerous reasons why a self-defense claim, and the instructions Defendant now claims should have been given, would have made no difference in the outcome of the case.

LAW

The defendant has the burden of establishing entitlement to the relief requested in a motion for relief from judgment filed pursuant to subchapter 6.500 of the Michigan Court Rules. MCR 6.508(D). The court may not grant relief to the defendant if the motion alleges grounds for relief that were decided against the defendant in a prior appeal or post-appeal proceeding, unless the defendant establishes that the decision is undermined by a retroactive change in the law. MCR 6.508(D)(2). Additionally, the court may not grant relief to the defendant if the motion alleges grounds for relief that could have been, but were not, raised on appeal from the conviction and sentence or in a prior 6.500 motion, unless the defendant demonstrates: (a) good cause for failure to raise such grounds on appeal or in a prior motion, and (b) actual prejudice from the

alleged irregularities that support the claim for relief. MCR 6.508(D)(3). In a conviction following a trial, "actual prejudice" exists where, but for the alleged error, the defendant would have had a reasonably likely chance of acquittal, or where the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand, regardless of whether the irregularity would have resulted in acquittal. MCR 6.508(D)(3)(b). If the court determines there is a significant possibility that the defendant is innocent of the crime, it may waive the "good cause" requirement. MCR 6.508(D).

Good cause can be established by showing ineffective assistance of appellate counsel, pursuant to the two-pronged test *of Strickland v Washington*, 466 US 668 (1984), or by showing that an external factor prevented the grounds from being raised on appeal. *People v Reed*, 449 Mich 375, 378 (1995). The first prong of ineffective assistance of counsel requires a defendant to prove that his counsel's performance was unconstitutionally deficient, and is established where counsel failed to meet an objective standard of reasonableness. *People v Reed*, 198 Mich App 639, 646 (1993). In establishing this first prong, a defendant must overcome the presumption that the challenged action was sound appellate strategy. *Id.* The second prong of ineffective assistance is established by proving the deficiency was prejudicial to the defendant. *Id.*

Appellate counsel's failure to raise an issue on appeal could overcome a presumption of sound appellate strategy and constitute ineffective assistance "if that error is sufficiently egregious and prejudicial."

People v Reed, 198 Mich App 639, 646, 647-48 (1993). However, mere failure to raise every conceivable issue on appeal does not per se constitute ineffective assistance or good cause for relief from judgment. *Id.* at 646-47. Counsel may exercise reasonable professional judgment by selecting issues most promising for appellate review. *Id.* An appellate attorney's "deliberate, tactical decision not to pursue a particular claim is not the type of circumstance envisioned by subchapter 6.500 to constitute 'good cause' for failure to raise an issue in an appeal as of right." *Id.* at 647-48.

APPLICATION

Defendant's Motion for Relief from Judgment argues that he is entitled to relief from his conviction because trial counsel's failure to object to and request certain jury instructions constituted ineffective assistance of trial counsel, affected the outcome of his trial, and caused him "actual prejudice." Defendant argues that his appellate counsel's ineffective assistance for failure to raise these issues on appeal constitutes "good cause." Alternatively, Defendant asks this Court to waive the "good cause" requirement pursuant to MCR 6.508(D) because he is actually innocent. In particular, Defendant claims that there is substantial evidence that he acted in lawful self-defense and is therefore innocent of first-degree murder.

Defendant's arguments of "good cause" and "actual prejudice" rely on the underlying argument that, had trial counsel requested more specific jury instructions regarding self defense and the duty to retreat, the outcome of trial would have been different. For the

following reasons, this Court finds that Defendant has not shown "good cause" or "actual prejudice," and is therefore not entitled to relief from his conviction.

On appeal, appellate counsel assisted Defendant by raising issues regarding the sufficiency and great weight of the evidence, prosecutorial misconduct, ineffective assistance of trial counsel for failure to object to certain evidence, erroneous exclusion of certain evidence, and juror misconduct. The Court of Appeals addressed these issues and affirmed Defendant's conviction in its June 5, 2014 opinion.

When the Court of Appeals addressed the issue regarding the sufficiency and great weight of the evidence, it made essentially the same determination it would have made under the second prong of an ineffective assistance of trial counsel claim: that, regardless of jury instructions, the evidence supported Defendant's conviction. In reaching its decision, the Court of Appeals considered the law on self defense and the duty to retreat, including the premise that a porch is part of a home—the same law that Defendant argues should have been better instructed to the jury. Thus, had the Court of Appeals been presented with these issues of ineffective assistance of trial counsel regarding jury instructions, it likely would have found that more specific jury instructions on self defense would not have changed the outcome of the trial.

Accordingly, Defendant has not shown "good cause" because, under the two-prong *Strickland* analysis, appellate counsel's decision not to raise these issues on appeal was objectively reasonable and not prejudicial to Defendant. Further, given the Court of Appeals'

determination that the evidence supported Defendant' conviction, this Court also finds that the alleged irregularity—ineffective assistance of trial counsel—would not have resulted in "actual prejudice" to Defendant.

Without a showing of "good cause" or "actual prejudice," Defendant is not entitled to relief from his conviction pursuant to MCR 6.508. Therefore, his Motion for Relief from Judgment and Motion for Evidentiary Hearing are DENIED.

IT IS SO ORDERED.

/s Cynthia A. Lane
HON. CYNTHIA A. LANE
Circuit Court Judge

APPENDIX J

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF ST. CLAIR

CASE NO. 12-001654-FC

[Filed August 30, 2017]

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff,

v.

CIDNEY BOWDEAN INGRAM
Defendant.

HON. CYNTHIA A. LANE

ORDER DENYING MOTION FOR RECONSIDERATION

At a session of said Court, continued and held in the City of Port Huron, County and State aforesaid, on 8/30/2017

Defendant filed a Motion for Relief from Judgment, which the Court denied. In his Motion for Relief from Judgment Defendant claimed that trial counsel was ineffective for failing to object to one jury instruction requested by the prosecution and for failing to request two additional jury instructions. Defendant

subsequently filed a Motion for Reconsideration of the Court's Order denying his Motion for Relief from Judgment, alleging that this Court erred when it found that Defendant's claims of instructional error failed to establish good cause or actual prejudice, as required by MCR 6.508.

The Court has reviewed Defendant's Motion for Reconsideration as well as the prosecution's response to that Motion, which the court directed pursuant to MCR 2.119(F)(2).

MCR 6.508(D)(3) provides that the trial court may not grant relief to a defendant where the motion alleges grounds for relief that could have been raised on appeal, unless the defendant makes a showing of good cause for failure to raise such grounds on appeal *and* actual prejudice from the alleged irregularities that support the claim for relief. Defendant has shown neither.

Defendant cites ineffective assistance of appellate counsel as his good cause for failing to raise these issues previously. Where ineffective assistance of counsel is alleged, a defendant must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness under professional norms *and* (2) there is a reasonable probability that, but for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable *Strickland v. Washington*, 466 US 668 (1984). The Michigan Supreme Court provided guidance in evaluating claims of ineffective assistance of appellate counsel in *People v. Reed*, 449 Mich 375 (1995). A deferential standard of review is applied to

appellate counsel's decisions. The failure to assert all arguable claims is insufficient to overcome the presumption that counsel functioned as a reasonable appellate attorney in selecting the issues presented on appeal. *Id* at 391. By merely second-guessing decisions made by appellate counsel, Defendant has failed to overcome the presumption that his appellate counsel functioned as a reasonable appellate attorney. Defendant has also failed to demonstrate that the issues he raises now would have been more likely to prevail on appeal than the issues raised by his appellate lawyer.

Defendant's Motion for Reconsideration presents the same issues previously ruled on by this Court and fails to demonstrate a palpable error by which this Court and the parties have been misled. Defendant's Motion for Reconsideration is therefore DENIED.

IT IS SO ORDERED.

/s Cynthia A. Lane
CYNTHIA A. LANE, Circuit Judge

APPENDIX K

Court of Appeals, State of Michigan

Docket No. 342589
LC No. 12-001654-FC

[Filed August 1, 2018]

People of MI	)
	)
v	)
	)
Cidney Bowdean Ingram	)
	)

Thomas C. Cameron
Presiding Judge

Karen M. Fort Hood

Anica Letica
Judges

ORDER

The Court orders that the delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

[SEAL] A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 01 2018 /s/ Jerome W. Zimmer
Date Chief Clerk

APPENDIX L

MICHIGAN SUPREME COURT
Lansing, Michigan

SC: 158449
COA: 342589
St. Clair CC: 12-001654-FC

[Filed April 30, 2019]

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

CIDNEY BOWDEAN INGRAM,
Defendant-Appellant.

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

Order

On order of the Court, the application for leave to appeal the August 1, 2018 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).

[SEAL] I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 30, 2019 /s/ Larry S. Royster
Clerk

APPENDIX M

MICHIGAN SUPREME COURT
Lansing, Michigan

SC: 158449
COA: 342589
St. Clair CC: 12-001654-FC

[Filed September 10, 2019]

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	)
v	)
CIDNEY BOWDEAN INGRAM, Defendant-Appellant.	)

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

Order

On order of the Court, the motion for reconsideration of this Court's April 30, 2019 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

[SEAL] I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 10, 2019 /s/ Larry S. Royster
Clerk

APPENDIX N

St. Clair Circuit Court

Case No. 12-001654-FC

[Dated December 4, 2012]

People of the State of Michigan	)
	)
v	)
	)
Cidney Bowdean Ingram	)
	)

Transcript of Jury Charge by the Trial Court,
Transcript Volume 5
December 4, 2012

Honorable Cynthia A. Lane,
Judge, 31st Judicial Circuit

Appearances:
Amy L. Stover (P69136), Assistant St. Clair County Prosecutor, on behalf of the People

Ray A. Paige (P41848), Attorney at Law, on behalf of the Defendant

* * *

[p.903]

MR. PAIGE: No, your Honor.

THE COURT: All right. The --

MR. PAIGE: Other, other than I agree that it shouldn't be given.

THE COURT: All right. Thank you.

We did discuss this matter in chambers and it's the opinion of the Court that none of the items under subsection 2 in standard criminal jury instruction CJI2d. 7.16 smaller A should be given, including item C because the facts as presented in this case do not justify the giving of any of those -- any part of subsection 2 which would include A through, through E. So, I am not giving a subsection 2, 2A through E. I'm only going to be giving subsection 1A, B, and then the small part after subsection B in 1.

All right, very well, that's placed on the record.

Will you bring the jury in, Charlie.

(Jury present at 2:08 p.m.)

THE COURT: Good afternoon. Welcome back.

THE BAILIFF: Jury's impaneled, your Honor.

THE COURT: Thank you, Charlie.

Ladies and gentlemen, it's now the time for me

[p.904]

to give you your final instructions on the law you are to, you are to apply to this case. Just to take care of a small housekeeping detail first, however.

I did give you a couple of pages of preliminary instructions, and when I gave you those, all of those

preliminary instructions from the bench, I said some of these may change, you know, by the end of the trial, and one of them has changed a little bit, and plus they've been supplemented by more final instructions. So when -- after I do finish reading these to you and after we draw our two alternates, then what -- and Charlie takes you back, I'm going to have him do a quick trade. Each of you will get a pack, this nice thick pack of final instructions and then he will -- you can give him the preliminary instructions you were given because those really have no application at this time, okay.

So, the evidence and the arguments in this case are finished, and I will now instruct you on the law. That is, I will explain the law that applies to this case.

Remember that you have taken an oath to return a true and just verdict based only on the evidence and my instructions on the law. You must not let sympathy or prejudice influence your decision.

As jurors, you must decide what the facts in the case are. That is your job and no one else's. You must

[p.905]

think about all the evidence and the testimony and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each of the witnesses said. What you decide about any fact in this case is final.

It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say. At

various times, I've given you some instructions about the law. You must take all of my instructions together as the law that you are to follow. You should not pay attention to some instructions and then ignore others.

To sum it up, it is your job to decide what the facts in this case are, to apply the law as I give it to you, and, in that way, to decide the case.

A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the Defendant is innocent. This presumption continues throughout the trial and entitles the Defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that he is guilty.

Noticed a little grammatical thing I need to correct there.

Every crime is made up of parts called elements. The Prosecutor must prove each element of the crime beyond

[p.906]

a reasonable doubt. The Defendant is not required to prove his innocence or to do anything. If you find that the Prosecutor has not proven every element beyond a reasonable doubt, then you must find the Defendant not guilty.

A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based upon reason and common sense. A reasonable doubt is just

that - a doubt that is reasonable after a careful and considered examination of the facts and the circumstances of this case.

Now when you discuss the case and decide on your verdict, you may only consider the evidence that has been properly admitted in this case. Therefore, it is important for you to understand what is evidence and what is not evidence.

Evidence includes only the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else that I tell you to consider as evidence.

Now, many things are not evidence, and you must be careful not to consider them as such. I will now describe some of the things that are not evidence.

The fact that the Defendant is charged with a crime - well, more grammatical changes - and is on trial

[p.907]

is not evidence. Likewise, the fact that the Defendant is charged with more than one crime is not evidence.

The lawyers' statements and arguments are not evidence. They are only meant to help you understand the evidence and each side's legal theories. The lawyers' questions to witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge.

Now my comments, rulings, questions and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I'm not trying to influence your vote or even to express a personal opinion about this case. However, if you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts, and you should decide this case from the evidence.

At times during the trial, I have excluded evidence that was offered or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence that I let in, and

[p.908]

nothing else.

Your decision should be based on all the evidence, regardless of which party produced it.

You should use your own common sense and general knowledge in weighing and judging the evidence, but you should not use any personal knowledge that you may have about a place, person, or an event. To repeat once more, you must decide this case based only on the evidence admitted during this trial.

As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject anything a witness -- everything a witness said. You

are free to believe all, none, or part of any person's testimony.

In deciding which testimony you believe, you should rely on your own common sense and every day experience. However, in deciding whether you believe a witness' testimony, you must set aside any bias or prejudice you may have based upon race, gender, or national origin of that witness.

There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about some of these questions:

[p.909]

Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that night that may have distracted the witness?

Did the witness seem to have a good memory?

How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

Does the witness' age and maturity affect how you judge his or her testimony?

Does the witness have any bias, prejudice, or personal interest in how this case is decided?

Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?

In general, does the witness have any special reason to tell the truth, or any special reason to lie?

All in all, how reasonable does the witness' testimony seem when you think about all of the other evidence in this case?

Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think

[p.910]

someone is lying or is simply mistaken. People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence that has been presented in this case.

However, you may conclude that a witness deliberately lied about something that is important to how you decide this case. If so, you may choose not to accept anything that that witness said. On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part that you think is true and then ignore the rest.

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that's direct evidence that it's raining.

Facts can also be proved by indirect, or circumstantial, evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a rain coat covered with small drops of water, that would be circumstantial evidence that it's raining.

You may consider circumstantial evidence.

[p.911]

Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove the elements of a crime. In other words, you should consider all of the evidence that you believe.

There has been some evidence that the Defendant ran away or hid after the alleged crime he was accused of.

This evidence does not prove guilt. A person may run or hide for innocent reasons, such as panic, mistake, or fear. However, a person may also run or hide because of a consciousness of guilt.

You must decide whether the evidence is true, and if true, whether it shows the Defendant had a guilty state of mind.

When the lawyers agree on a statement of facts, these are called stipulated facts. You may disregard -- I'm sorry. You may regard such stipulated facts as true, but you are not required to do so.

You may consider whether the Defendant had a reason to commit the alleged crime, but a reason, by itself, is not enough to find a person guilty of a crime.

The Prosecutor does not have to prove the Defendant had a reason to commit the alleged crime. She only has to show that the Defendant actually committed the crime and that he meant to do so.

The Defendant's intent may be proved by what he

[p.912]

said, what he did, how he did it, or by any other facts and circumstances in evidence.

You should not decide this case based upon which side presented more witnesses. Instead, you should think first about each witness and each piece of evidence and whether you believe them. Then you must decide whether the testimony and the evidence you believe proves beyond a reasonable doubt that the Defendant is guilty.

You have heard that a lawyer talked to one of the witnesses. There is nothing wrong with this. A lawyer may talk to a witness to find out what the witness knows about the case and what the witness' testimony will be.

You have heard testimony from witnesses who are police officers. That testimony is to be judged by the same standards you use to evaluate the testimony of any other witness.

You've heard testimony from a witness, Doctor Daniel Spitz, who has given you his opinion as an

expert in the field of forensic pathology. Experts are allowed to give opinions in court about matters that they are experts on.

However, you do not have to believe an expert's opinion. Instead, you should decide whether you believe it and how important you think it is. When you decide

[p.913]

whether you believe an expert's opinion, think carefully about the reasons and the facts that he gave for his opinion, and whether those facts are true. You should also think about the expert's qualifications, and whether his opinion makes sense when you think about the other evidence in this case.

Now in Count 1, the Defendant, Cidney Ingram, is charged with the crime of first degree premeditated murder. To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant caused the death of Jason Williams, that is, that Jason Williams died as a result of being shot.

Second, that the Defendant intended to kill Jason Williams.

Third, that this intent to kill was premeditated, that is, thought out beforehand.

Fourth, that the killing was deliberate, which means that the Defendant considered the pros and cons of the killing and thought about and chose his actions before he did it. There must have been real and

substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances in

[p.914]

this case. The killing cannot be the result of a sudden impulse without thought or reflection.

Fifth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

You may also consider the lesser charge of second degree murder. To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant caused the death of Jason Williams, that is, that Jason Williams died as a result of gunshot wounds.

Second, that the Defendant had one of these three states of mind: He intended to kill, or he knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of his actions.

Third, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

Now the crime of murder may be reduced to voluntary manslaughter if the Defendant acted out of passion or anger brought about by adequate cause and

before the Defendant had a reasonable time to calm down. For manslaughter, the following two things must be

[p.915]

present:

First, when the Defendant acted, his thinking must be disturbed by emotional excitement to the point that a reasonable person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been the result of something that would cause a reasonable person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide.

Second, the killing itself must result from this emotional excitement. The Defendant must have acted before a reasonable time had passed to calm down and return to reason. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

The Defendant is also charged with the separate crime of possessing a firearm at the time he committed or attempted to commit the crime of murder.

To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant committed or attempted to commit the crime of murder, which has been defined

for you. It is not necessary, however, that the Defendant be convicted of that crime.

[p.916]

Second, that at the time the Defendant committed or attempted to commit that crime they knowingly carried or possessed a firearm.

It does not matter whether or not the gun was loaded.

Now the Defendant claims that he acted in lawful self-defense. A person has the right to use force or even take a life to defend himself under certain circumstances. If a person acts in lawful self-defense, the person's actions are justified and he is not guilty.

You should consider all the evidence and use the following rules to decide whether the Defendant acted in lawful self-defense. Remember to judge the Defendant's conduct according to how the circumstances appeared to him at the time he acted.

First, at the time he acted, the Defendant must have honestly and reasonably believed that he was in danger of being killed or seriously injured. If the Defendant's belief was honest and reasonable, he could act immediately to defend himself even if it turned out later that he was wrong about how much danger he was in. Excuse me. In deciding if the Defendant's belief was honest and reasonable, you should consider all the circumstances as they appeared to the Defendant at the time.

Second, a person may not kill or seriously

[p.917]

injure another person just to protect himself against what seems like a threat of only minor injury. The Defendant must have been afraid of death or serious physical injury. When you decide if the Defendant was afraid of one or more of these, you should consider all the circumstances including the following: The condition of the people involved, including their relative strength/whether the person was armed with a dangerous weapon or had some other means of injuring the Defendant/the nature of the other person's attack or threat.

Third, at the time he acted, the Defendant must have honestly and reasonably believed that what he did was immediately necessary. Under the law, a person may only use as much force as he thinks is necessary at the time to protect himself. When you decide the amount of force used seemed to be necessary, you may consider whether the Defendant knew about any other ways of protecting himself, but you may also consider how the excitement of the moment affected the choice the Defendant made.

A person can use deadly force in self-defense only where it is necessary to do so. If the Defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the Defendant honestly and reasonably believed he needed to use deadly force in self-defense.

[p.918]

However, a person is never to retreat if attacked in his own home, nor if the person believes that an

attacker is about to use a deadly weapon, nor if the person is subject to a sudden, fierce, and violent attack.

Further, a person is not required to retreat if the person has not or is not engaged in the commission of a crime at the time that the deadly force is used, and has a legal right to be where the person is at that time, and has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent death or great bodily harm to the person or another.

If you find that the decedent was breaking and entering a dwelling or business, or committing home invasion, or had broke and entered or committed home invasion and was still present in the dwelling or business, or is unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will, or the Defendant honestly and reasonably believed the decedent was engaged in any of the conduct just described, then you must presume that the Defendant had an honest and reasonable belief that imminent death or great bodily harm would occur.

A person who started an assault on someone else with deadly force or with a dangerous or deadly weapon cannot claim he acted in self-defense unless he genuinely

[p.919]

stopped his assault and clearly let the other person know that he wanted to make peace. Then if the other person kept on fighting or started fighting again later, the Defendant had the same right to defend himself as anyone else and could use force to save himself from immediate physical harm.

The Defendant does not have to prove that he acted in self-defense. Instead, the Prosecutor must prove beyond a reasonable doubt that the Defendant did not act in self-defense.

Now when you go to the jury room, you should first chose a foreperson. The foreperson should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.

During your deliberations, please turn off your cell phones or other communications equipment until we've recessed.

A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agrees on that verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up your own mind. Any verdict must represent the individual, considered judgment of each juror.

It is your duty as jurors to talk to each other

[p.920]

and make every reasonable effort to reach agreement. Express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors. Rethink your opinions and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences.

However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because the other jurors

disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own, and you must vote honestly and in good conscience.

Possible penalty should not influence your decision. It is the duty of the Judge to fix the penalty within the limits provided by law.

If you want to communicate with me while you're in the jury room, please have your foreperson write a note and give it to the Bailiff. It is not proper for you to talk directly with me, the lawyers, court officers other than those short exchanges with the Bailiff, or other people who are involved in this case.

As you discuss the case, you must not let anyone, even me, know how our voting stands. Therefore, until you return with a unanimous verdict, do not reveal this to anyone outside of the jury room.

[p.921]

If you want to look at any or all of the exhibits that have been admitted, just ask for them.

When you go to the jury room, you will be given a written copy of these instructions that you have just heard. As you discuss the case, you should think about all my instructions together as the law that you are to follow.

The Defendant is charged with the crimes of first degree premeditated murder and felony firearm. These are separate crimes, and the Prosecutor is charging the Defendant committed both of them. You must consider

each crime separately in light of all of the evidence in this case.

You may find the Defendant guilty of all or any one of these crimes, or guilty of a less serious crime of second degree murder or manslaughter, or not guilty.

And that concludes my instructions. As you notice as I was reading, I found some grammatical errors in these that we're going to correct so that you get a clean copy that reads well. So, I am going to have those corrections made.

Right now I'm going to have Charlie take you to the jury room -- well, I take it back. I can't do that yet because there are 14 of you. We're going to draw two alternates, but once we -- after we draw those alternates

[p.922]

I'll have Charlie take you back and your first order of business at that time will be to choose a foreperson.

Now, Debbie, you may draw the two alternate names.

THE CLERK: L-225 Julie Davis. And J-190, Timothy Mag -- Madaj. Madaj.

THE COURT: I don't think he's -- I don't see him on my list here. Oh, I'm sorry. Oh, there you are. 190, you're in the front row. Sorry about that.

How is that pronounced, Mr. Madaj?

JUROR 4: Madaj.

THE COURT: Okay, Mr. Madaj.

All right. Well, sorry about that. You were so quiet I didn't even notice you.

All right, the two of you, Mrs. Davis and Mr. Madaj, you are excused. Please do not discuss the case with anyone. Don't read any news accounts or any, any media accounts whatsoever because there's always a chance that if one of the other jurors can't serve, we would have to call you back to have you consider -- continue deliberations in that juror's place. So, keep that in mind and don't do those things until a verdict is rendered.

So, enjoy the rest of your day.

[p.923]

(Jurors L-225 and J-190 excused at 2:36 p.m.)

THE COURT: And Charlie will let you get your stuff.

Just be a minute.

All right, Charlie will take you back and you will get your written instructions shortly.

(Jury sequestered at 2:37 p.m.)

THE COURT: All right, some grammatical changes need to be made. I've got the instructions here. I've made them if these are all -- these are in the Prosecutor's. So if you could make those changes, Mrs. Stover, and get them to Kathryn. She doesn't have all of those on her computer, so, but I've written them in.

And I think the others are ones that we can make. The others are typographical errors.

MRS. STOVER: Do you want me to just do them all since I'm doing seven of them already? I mean, it won't take me too long.

THE COURT: It's, it's really -- it's up to you. If, if that's easier for you to do that. Otherwise we'll just get you those and we'll just insert them in here.

MRS. STOVER: I think that would be simpler.

* * *