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No. 23-1922

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 18, 2024
KELLY L. STEPHENS, Clerk

JASON KEITH-DAVID MANNERS,

Petitioner-Appellant,

v.

BRYAN MORRISON, Warden,

Respondent-Appellee.

ORDER

Before: THAPAR, Circuit Judge.

Jason Keith-David Manners, a Michigan prisoner proceeding through counsel, appeals a district court order denying his 28 U.S.C. § 2254 petition. Manners moves the court for a certificate of appealability (COA).

A jury convicted Manners of first-degree criminal sexual conduct, unlawful imprisonment, assault with intent to do bodily harm, and domestic violence. *Michigan v. Manners*, No. 337319, 2018 WL 4577431, at *1 (Mich. Ct. App. Sept. 20, 2018) (per curiam). The trial court sentenced him as a fourth habitual offender to a cumulative 30 to 50 years of imprisonment. *Id.* At trial, the jury heard evidence that Manners physically and sexually assaulted his former girlfriend, Shamona Fly, beat her when she tried to escape, and demanded that she unlock her phone so he could read her text messages. *Id.* Manners represented himself for most of his trial. He testified that he loved Fly, that the two got into an argument on the night in question, but that he never sexually assaulted her or intended to hurt her.

Proceeding pro se, Manners appealed his convictions and argued, among other things, that the trial court violated his rights to self-representation, due process, and confrontation and his right to present a defense. *Id.* at *1-7. The Court of Appeals affirmed, *id.* at *13, and the Michigan

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Supreme Court denied permission to appeal. *Michigan v. Manners*, 932 N.W.2d 616 (Mich. 2019) (mem.).

Manners then filed this § 2254 petition. . He claimed that the trial court violated his (1) confrontation rights, (2) due process rights by using false testimony, (3) right to present a defense by limiting his closing argument, (4) right to self-representation by asserting control over his defense, and (5) due process rights by admitting an incomplete writing. The district court denied Manners's habeas petition and denied him a COA but granted his request to proceed in forma pauperis on appeal. The district court then denied Manners's motion to alter judgment. Manners, through counsel, now seeks a COA on all his claims except claim five, which he has abandoned. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam).

A COA 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). "That standard is met when 'reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner,'" *Welch v. United States*, 578 U.S. 120, 127 (2016) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or when "jurists could conclude the issues presented are adequate to deserve encouragement to proceed further," *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Under the Antiterrorism and Effective Death Penalty Act, if a state court has previously adjudicated a petitioner's claims on the merits, a district court may not grant habeas relief unless the state court's adjudication of the claim resulted in "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." § 2254(d); *see Harrington v. Richter*, 562 U.S. 86, 98-100 (2011). Where the state courts adjudicated the petitioner's claim on the merits, the relevant question at the COA stage is whether the district court's application of § 2254(d) to that claim is debatable by jurists of reason. *Miller-El*, 537 U.S. at 336.

I. Confrontation Clause

In his first claim, Manners argues that the trial court violated his confrontation rights by limiting his attempt to impeach Fly with her prior testimony. On direct appeal, the state appellate

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court determined that the trial court reasonably limited Manners's cross examination of Fly and that the challenged questioning ultimately went to a minor factual dispute. *Manners*, 2018 WL 4577431, at *4. The district court determined that the state court reasonably concluded that Manners was not prevented from cross examining Fly.

Reasonable jurists would not debate this conclusion. The Sixth Amendment guarantees a criminal defendant the right "to be confronted with the witnesses against him" and "to test the credibility of witnesses through cross-examination." *Boggs v. Collins*, 226 F.3d 728, 736 (6th Cir. 2000) (quoting U.S. Const. amend. VI). But "this right is not absolute." *Jordan v. Warden, Lebanon Corr. Inst.*, 675 F.3d 586, 594 (6th Cir. 2012). Rather, it guarantees only "an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Id.* (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985)). "Where the trial court limits the extent of cross-examination, the inquiry for the reviewing court is 'whether the jury had enough information, despite the limits placed on otherwise permitted cross-examination, to assess the defense theory.'" *Stewart v. Wolfenbarger*, 468 F.3d 338, 347 (6th Cir. 2006) (quoting *Dorsey v. Parke*, 872 F.2d 163, 167 (6th Cir. 1989)).

The record establishes that the trial court gave Manners ample opportunity to cross-examine Fly on her inconsistent statements. Manners sought to impeach Fly regarding whether Manners was inside or outside of her vehicle when he hit her. After the prosecutor objected, the court aided Manners in properly laying the foundation and allowing him to use Fly's testimony from the August 29, 2016, preliminary hearing to refresh her memory. In response to the inconsistencies, Fly noted that it all "happen[ed] so fast" and was a "blur."

The court then sustained the prosecutor's objection when Manners attempted to use Fly's testimony from a second preliminary hearing to impeach her on the same factual dispute. Because the jury had already heard Manners identify the inconsistency and Fly explain it, the state appellate court held that sustaining the objection did not violate Manners's confrontation rights. That conclusion was reasonable.

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II. False testimony

In his second claim, Manners argues that the prosecutor committed misconduct by knowingly presenting Fly's perjured testimony. On direct appeal, the state court determined that Manners did not preserve the issue and that, even if he did, the discrepancies concerning minor details in Fly's testimony were insufficient to show that the prosecutor knowingly presented false testimony. *Manners*, 2018 WL 4577431, at *6-7. The district court determined that this conclusion was reasonable, noting that Manners did not show that Fly's testimony was false.

Reasonable jurists would not debate this determination. A prosecutor violates due process by presenting testimony that is "indisputably false." *Monea v. United States*, 914 F.3d 414, 421 (6th Cir. 2019) (quoting *United States v. Lochmondy*, 890 F.2d 817, 822-23 (6th Cir. 1989)). "[M]ere inconsistencies" are not sufficient. *Id.* The record does not demonstrate that Fly committed perjury. The discrepancies between her preliminary hearing testimony and her trial testimony do not show that her testimony was "indisputably false." *Id.* Rather, she explained that the incident was a "blur" and she was simply unsure about exactly where Manners was when he struck her. This explanation was supported by expert testimony that such a "traumatic experience . . . may cause a person's memory to function differently than normal." *Manners*, 2018 WL 4577431, at *6. Overall, Manners's claim relies on "mere inconsistencies." *Monea*, 914 F.3d at 421 (quoting *Lochmondy*, 890 F.2d at 822). On this record, the state court reasonably determined that the prosecutor's actions did not "so infect[] the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974).

III. Present a defense

In his third claim, Manners argues that the trial court violated his right to present a defense by limiting his closing argument to 20 minutes. On direct appeal, the state court determined that the trial court reasonably placed a time limit on the closing arguments and that the court allowed Manners's closing to exceed the imposed timeframe. *Manners*, 2018 WL 4577431, at *3-4. The district court determined that the state court reasonably applied clearly established federal law in rejecting this claim.

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Reasonable jurists would not debate this determination. Though due process includes the right to present a defense, trial courts are afforded substantial discretion in controlling the trial, including placing limits on closing arguments. *See United States v. Currie*, 609 F.2d 1193, 1194 (6th Cir. 1979) (per curiam). A trial judge "may limit counsel to a reasonable time and may terminate argument when continuation would be repetitive or redundant." *Herring v. New York*, 422 U.S. 853, 862 (1975); *see United States v. Chapple*, 801 F. App'x 379, 382 (6th Cir. 2020) ("[S]o long as the trial court allows closing arguments, it has significant discretion in curbing those arguments.").

Before closing arguments, the court informed the parties of the 20-minute time limit. Manners did not object. Then, after Manners presented more than 30 minutes of argument, the court informed him he had five more minutes to "wrap it up." Manners instead tried to testify rather than summarize the evidence and continued to argue with the judge. After sustaining multiple objections from the prosecutor for Manners's improper comments, the judge instructed Manners to "make [his] argument or sit down." Manners then proceeded with his closing argument. He spoke for several more minutes until the judge cut him off and removed the jury from the courtroom after an "outburst" where Manners started crying.

Given Manners's awareness of the time limit, the court's patience with his exceeding the limit, and the non-technical nature of the case, reasonable jurists would not debate the reasonableness of the state court's rejection of this claim. *See Herring*, 422 U.S. at 862. Manners argues that, under *Herring*, the court violated his constitutional rights because he was only halfway through his argument when the court stopped him. According to Manners, this means that his argument was not "repetitive or redundant." *Id.* But Manners repeatedly attempted to bring up facts not in evidence. Moreover, he had sufficient time to discuss his theory of the case: that he loved Fly, was in a consensual relationship with her, and would not have beat her to read her text messages because he already had access to her passwords. Reasonable jurists would not debate the district court's denial of this claim. *See Herring*, 422 U.S. at 862.

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IV. Self-representation

In his fourth claim, Manners argues that the trial court violated his right to self-representation by not allowing Manners to present evidence about his criminal history. On direct appeal, the state court determined that the trial court's evidentiary rulings did not implicate Manners's self-representation rights or present any other constitutional issues. *Manners*, 2018 WL 4577431, at *1-3. The district court concluded that this determination was reasonable, deferring to the state court's interpretation of state evidentiary rules.

Reasonable jurists would not debate this conclusion. The Sixth Amendment guarantees the right to self-representation. *See Faretta v. California*, 422 U.S. 806 (1975). And reasonable jurists would not debate that the trial court allowed Manners to represent himself at trial. He cross-examined the prosecution's witnesses, made objections, called himself as a witness, and presented his own closing argument. *See Manners*, 2018 WL 4577431, at *1. Although Manners had standby counsel present at trial, he ultimately controlled his own defense. *Id.*

Instead, this claim is more properly framed as a right-to-present-a-defense claim. Due process includes the right to present a defense, but it does not give a defendant a right to introduce evidence that is inadmissible under standard rules of evidence. *Montana v. Egelhoff*, 518 U.S. 37, 42 (1996). And a perceived state-law error regarding the exclusion of evidence is not the proper basis for federal habeas relief. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Thus, a habeas court does not ask "whether the Michigan courts properly construed one of the State's evidentiary rules," but rather asks "whether the state courts' construction of their evidentiary rule . . . violates the Sixth Amendment right to present a complete defense." *Wynne v. Renico*, 606 F.3d 867, 870 (6th Cir. 2010).

Accordingly, this court does not review whether the court properly withheld Manners's proposed character evidence under Michigan Rule of Evidence 404. *See id.* Rather, this court determines whether reasonable jurists would debate that the state court's application of Michigan Rule of Evidence 404 did not involve an unreasonable application of federal constitutional law. *Id.* Manners cannot show that the exclusion of his criminal history violated his right to present a complete defense because he was still able to cross-examine witnesses, testify, and present his

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defense to the jury. *See Manners*, 2018 WL 4577431, at *1. Further, when the court told Manners that it would exclude evidence about his prior criminal history but allow Manners to testify that he had never been convicted of sexual assault, Manners agreed to that approach. Reasonable jurists would therefore not debate the district court's denial of this claim.

For these reasons, Manners's application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

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No. 23-1922

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED 2a
Aug 28, 2024
KELLY L. STEPHENS, Clerk

JASON KEITH-DAVID MANNERS,

Petitioner-Appellant,

v.

BRYAN MORRISON, WARDEN,

Respondent-Appellee.

ORDER

Before: WHITE, STRANCH, and BUSH, Circuit Judges.

Jason Keith-David Manners, a Michigan prisoner, petitions for rehearing of our June 18, 2024, order denying his motion for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court,* none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

*Judge Davis recused herself from participation in this ruling.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON KEITH-DAVID MANNERS, Petitioner, v. BRYAN MORRISON,[1] Respondent.	Case Nos. 20-cv-12108 Honorable Shalina D. Kumar Mag. Judge Patricia T. Morris

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS (ECF NO. 1), DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY, GRANTING MOTION TO CLARIFY (ECF NO. 21), DENYING MOTION FOR RECONSIDERATION (ECF NO. 20), AND GRANTING LEAVE TO APPEAL IN FORMA PAUPERIS

I. Introduction

Petitioner Jason Keith-David Manners filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. The petition challenges Petitioner's state convictions for two counts of first-degree criminal sexual conduct, M.C.L. 750.520b(1), unlawful imprisonment, M.C.L. 750.349b,

[1] In its March 22, 2023 Order Denying Petitioner's Motion for Summary Judgment, the Court substituted Bryan Morrison, the warden of the facility where Petitioner is incarcerated, as Respondent. ECF No. 19.

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assault with intent to do great bodily harm less than murder, M.C.L. 750.84, and domestic violence, M.C.L. 750.81(2). He raises five claims for relief. The Court finds that Petitioner's claims do not warrant relief and denies the petition. The Court declines to issue a certificate of appealability but allows Petitioner to proceed *in forma pauperis* on appeal.

II. Background

Petitioner's convictions arise from the assault of his ex-girlfriend, SF. SF ended her relationship with Petitioner in early April 2016 because he verbally and physically abused her, but the two still called and texted each other. ECF No. 11-12, PageID.881, 888. On April 23, 2016, SF received over 200 calls from Petitioner. *Id.* at 888. Eventually, she agreed to bring some of his belongings, including clothing and other personal items, to his house. *Id.* She brought these items to Petitioner's home during the early morning hours of April 24, 2016. *Id.* at PageID.889. Petitioner approached the driver's side door. *Id.* He saw a text message notification appear on SF's cell phone. *Id.* at 892. SF refused his request to unlock her phone to allow Petitioner to read the message. *Id.*

Petitioner then punched her in the face and dragged her into his home. *Id.* at PageID.895-96. He accused her of cheating on him and said, "I'm going to check your pussy to see if you've been cheating on me." *Id.* at

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PageID.898. Petitioner started kicking and punching SF. *Id.* Petitioner dragged SF to his upstairs bedroom where he raped her. *Id.* at 904-05. Petitioner tried to choke SF by tying an extension cord around her neck. *Id.*

Petitioner then forced SF into her vehicle and drove to a gas station. *Id.* at PageID.912-15. At the gas station, she attempted to run away. *Id.* at PageID.915. Petitioner caught her and once again forced her into the vehicle. *Id.* Petitioner drove home and, before SF could exit the vehicle, drove back to the gas station. *Id.* at PageID.917-18. Petitioner parked with the passenger-side door against a pole so that SF could not open the door. *Id.* at PageID.918. While Petitioner was in the store, SF exited the car through the driver's door and ran. ECF No. 15-1, PageID.1950. Petitioner again caught her, forced her into the car, and brought SF back to his home. *Id.* Petitioner dragged SF upstairs and beat her. *Id.* at PageID.1956-58. At one point, SF attempted to dive through the second-floor window. *Id.* at 1957-58. She shattered the glass with her arm, but Petitioner dragged her into the home before she could escape. *Id.* A neighbor called 911 after hearing the window break and hearing the victim screaming, "he's trying to kill me." ECF No. 11-13, PageID.976. SF was bleeding profusely when police arrived. *Id.*

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Detroit police officer Ronald Hill testified that he responded to the 911 call along with his partner, officer Thomas Deasfernandes. *Id.* at PageID.983. Hill testified that as he approached the home, he could hear yelling and screaming, and he observed a broken window with "a tremendous amount of blood coming down the side of the house." *Id.* at PageID.985. Hill stood by the side of the house while his partner knocked on the front door. *Id.* Hill saw Petitioner exit a back door and take off running. *Id.* Hill and his partner pursued Petitioner and ultimately found him hiding in a garage. *Id.* at 988. After placing Petitioner under arrest, Hill returned to Petitioner's home where he found the victim. *Id.* at 989. She was bleeding from her mouth, her right arm was lacerated almost to the bone. *Id.* at PageID.989-90. The victim told Hill that she had been choked and beaten and that she attempted to jump from a second-story window to escape. *Id.* at PageID.1003.

Petitioner represented himself at trial with the assistance of standby counsel. Petitioner testified in his own defense. Standby counsel questioned Petitioner using questions prepared by Petitioner. He testified to the following: He and SF were still in a relationship on April 24, 2016. ECF No. 11-14, PageID.1159-60. SF arrived at his house sometime between 4:30 a.m. and 5:00 a.m. *Id.* at PageID.1162-63. After the two engaged in

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consensual sex, they argued because someone unknown to Petitioner texted SF and she would not allow Petitioner to see the message. *Id.* at PageID.1164-67. They continued arguing most of the morning. *Id.* Petitioner went to a gas station twice. He did not invite SF to drive with him to the gas station, nor did he force her to go. *Id.* at PageID.1169. Instead, he was trying to get away from her by going to the gas station. *Id.* When they returned to Petitioner's home, the two continued to argue about the cell phone. *Id.* at PageID.1176-77. At some point, SF broke the bedroom window. *Id.* at PageID.1179-80. He gently extracted her arm from the window, carefully clearing away the broken glass. *Id.* He was preparing to take her to the hospital when the police arrived. *Id.* at PageID.1181. Petitioner fled because he did not want to get arrested for violating a no-contact order. *Id.* at PageID.1182-83.

The jury found Petitioner guilty of two counts of first-degree criminal sexual conduct, unlawful imprisonment, and assault with intent to do great bodily harm less than murder. Petitioner was sentenced to 30 to 50 years for each first-degree criminal sexual conduct conviction, 20 to 30 years for unlawful imprisonment, 20 to 30 years for assault with intent to do great bodily harm, and 93 days for domestic violence.

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Petitioner filed an appeal of right in the Michigan Court of Appeals, which affirmed his conviction. *People v. Manners*, No. 337319, 2018 WL 4577431 (Mich. Ct. App. Sept. 20, 2018). The Michigan Supreme Court denied Petitioner leave to appeal. *People v. Manners*, 504 Mich. 957 (2019).

Petitioner then filed this habeas petition. He raises these claims:

> I. Petitioner's Sixth Amendment right of confrontation was violated by the trial court's precluding him from impeaching the complainant.
>
> II. Petitioner's constitutional right to due process was violated by the State knowingly using false testimony and allowing the false testimony to stand uncorrected.
>
> III. Petitioner's constitutionally guaranteed meaningful opportunity to present a complete defense was violated by the trial court's depriving him of adequate time for closing argument.
>
> IV. Petitioner's constitutional right to self-representation was violated by the trial court's abridging his control over his defense.
>
> V. Petitioner's constitutional right to due process was violated by the trial court's admission of an incomplete writing.

Respondent filed an answer in opposition arguing that Petitioner procedurally defaulted his second and fourth claims and that all the claims lack merit. ECF No. 10. Petitioner filed a reply brief. ECF No. 12.

The doctrine of procedural default is applicable when a petitioner fails to comply with a state procedural rule, the rule is enforced by the state

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court, the rule is "an independent and adequate state ground to foreclose review of the federal constitutional claim," and the petitioner cannot establish cause for failing to follow the rule and prejudice by the alleged constitutional error. *White v. Mitchell*, 431 F.3d 517, 524 (6th Cir. 2005). The Court finds it unnecessary to address the procedural question because it is not a jurisdictional bar to review of the merits, *Howard v. Bouchard*, 405 F.3d 459, 476 (6th Cir. 2005), and "federal courts are not required to address a procedural-default issue before deciding against the petitioner on the merits," *Hudson v. Jones*, 351 F.3d 212, 215 (6th Cir. 2003) (citing *Lambrix v. Singletary*, 520 U.S. 518, 525 (1997)). The procedural defense will not affect the outcome of this case, and it is more efficient to proceed directly to the merits.

III. Standard of Review

Federal courts are authorized to issue habeas relief for state prisoners pursuant to 28 U.S.C § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). *Harrington v. Richter*, 562 U.S. 86, 97 (2011). But this power is limited to "only those applications alleging that a person is in state custody 'in violation of the Constitution or laws or treaties of the United States.'" *Id.*

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For claims adjudicated on the merits in state court proceedings, federal courts may issue habeas relief only if the state court adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* § 2254(d)(2).

A decision of a state court is "contrary to" clearly established federal law if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law, or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000). An "unreasonable application" occurs when "a state-court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id.* at 409.

AEDPA "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 omitted). A "state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the

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correctness of the state court's decision." *Harrington*, 562 U.S. at 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Pursuant to § 2254(d), a court must determine what arguments or theories supported or could have supported the state court's decision; and then it must ask "whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision" of the Supreme Court. *Id.* A "readiness to attribute error [to a state court] is inconsistent with the presumption that state courts know and follow the law." *Woodford v. Viscotti*, 537 U.S. 19, 24 (2002).

A state court's factual determinations are presumed correct on federal habeas review. *See* 28 U.S.C. § 2254(e)(1). This presumption is rebutted only with clear and convincing evidence. *Id.* Moreover, for claims adjudicated on the merits in state court, habeas review is "limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

IV. Petitioner's Motions (ECF Nos. 20, 21)

At the outset, the Court addresses two related motions that are currently pending. First, Petitioner filed a motion to clarify. ECF No. 21. Petitioner seeks to clarify that, in addition to convictions for two counts of first-degree criminal sexual conduct, unlawful imprisonment, and assault,

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the petition challenges a domestic violence conviction obtained in the same case. The Court grants the motion.

Second, Petitioner filed a motion for reconsideration of the Court's order denying his motion for summary judgment. ECF No. 20. Given today's denial of the habeas corpus petition, Petitioner's motion for reconsideration is denied as moot.

V. Analysis

A. Right of Confrontation

In his first claim, Petitioner argues that the trial court violated his Sixth Amendment right of confrontation when the trial court limited his attempts to impeach the victim with her prior testimony from two preliminary examinations. The first preliminary examination was held on May 13, 2016 and cut short because Petitioner, who was representing himself, had an outburst during the State's direct examination of the victim. *See* ECF No. 11-2, PageID.14-15. Petitioner was referred for a competency evaluation and found competent to stand trial. ECF No. 11-5. A second, full preliminary examination was held on August 29, 2016. SF testified at both preliminary examinations, but her testimony during the first was truncated by Petitioner's outburst.

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The Sixth Amendment's Confrontation Clause guarantees an accused in a criminal prosecution the right "to be confronted with the witnesses against him." U.S. Const. amend. VI. The right of confrontation traditionally includes the right to attempt to discredit a witness by, among other strategies, attempting to impeach a witness with prior inconsistent testimony. *Davis v. Alaska*, 415 U.S. 308, 316 (1974). But trial judges have "wide latitude" to impose "reasonable limits" on the scope of cross-examination "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). In short, "'the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *Id.* (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985)).

The Michigan Court of Appeals held that any limitations placed upon Petitioner's cross-examination of the victim were reasonable and in conformity with Michigan law. *Manners*, 2018 WL 4577431, at *4. It explained that Petitioner was allowed to cross-examine the victim about her preliminary examination testimony at length, and at various points the trial court offered suggestions on how Petitioner could more effectively attempt

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to impeach the victim with her preliminary examination testimony. *Id.* The state appellate court noted that the trial court reasonably directed Petitioner to move on only after his questioning had become repetitive so as to avoid the "needless consumption of time." *Id.* The state appellate court stated that Petitioner's questioning "concerned a very minor aspect . . . whether Manners was inside or outside the complainant's car at certain times when the [victim] first arrived at [Petitioner's] house." *Id.* This point was not critical to the prosecution's case, given the victim's testimony and the corroborating evidence. *Id.* The state appellate court concluded, "Overall, the trial court exercised extreme patience with [Petitioner's] cross-examination, and the trial court's careful handling of this matter did not deprive Manners of his constitutional right of confrontation." *Id.*

Petitioner was not prevented from cross-examining the victim about her prior testimony. As explained by the Michigan Court of Appeals, the trial judge exercised remarkable patience throughout and did not place any meaningful restrictions on cross-examination other than attempting to guide Petitioner through the proper procedures. The state court allowed Petitioner ample opportunity to cross-examine the victim, and Petitioner was not denied his right to present a meaningful defense. *See Van Arsdall*, 475

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U.S. at 679. Therefore, the Court finds that the state court decision was not contrary to or an unreasonable application of Supreme Court precedent.

B. Conduct of the Prosecutor

Next, Petitioner argues that the prosecutor committed misconduct by knowingly presenting perjured testimony from the victim. A prosecutor's misconduct violates a criminal defendant's constitutional rights if it "'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)). Prosecutorial misconduct entails much more than conduct that is "undesirable or even universally condemned." *Id.* (internal quotation omitted). To constitute a due process violation, the conduct must have been "so egregious so as to render the entire trial fundamentally unfair." *Byrd v. Collins*, 209 F.3d 486, 529 (6th Cir. 2000) (citations omitted). Prosecutors may not deliberately present evidence that they know is false. Indeed, the "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio v. United States*, 405 U.S. 150, 153 (1972) (citations and internal quotations omitted).

Petitioner maintains that the prosecutor knowingly presented false testimony from the victim because there were discrepancies between her

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trial testimony and preliminary examination testimony. The Michigan Court of Appeals recognized that a prosecutor's knowing presentation of material, false testimony could violate due process but found no violation because Petitioner did not establish that the victim's trial testimony was false. *Manners*, 2018 WL 4577431, at *6. The state court reasoned that although Petitioner pointed to some apparent discrepancies "concerning relatively minor details" between the victim's trial testimony and preliminary examination testimony, such discrepancies did not show false testimony because Petitioner "fail[ed] to account for the possibility that the [discrepancies] were the product of honest mistakes or memory impairments," especially given that Petitioner raped, beat, and held the victim captive for several hours and that according to a forensic nurse's expert testimony, such a "traumatic experience . . . may cause a person's memory to function differently than normal." *Id.* The state appellate court stressed that although Petitioner "was afforded ample opportunity to cross-examine the complainant regarding any discrepancies in her testimony or statements," the jury still credited the victim's testimony, which was "corroborated in numerous respects by other evidence at trial." *Id.* at *7.

Petitioner has not shown that the Michigan Court of Appeals' holding was unreasonable. The inconsistencies in the victim's testimony do not

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establish that her testimony was false. Her testimony was corroborated by much evidence, including the testimony of a police officer who observed her post-assault physical and mental condition and a "tremendous amount of blood" where she had been injured, the testimony of a neighbor who heard screaming and glass shattering, the testimony of a DNA expert stating that Petitioner's DNA was found on an anal and perianal swab taken from the victim's body, and surveillance video showing Petitioner and the victim present at a gas station while he held her captive. The discrepancies were placed before the jury and, because the victim testified, the reliability of her testimony was assessed "by testing in the crucible of cross-examination." *Crawford v. Washington*, 541 U.S. 36, 41 (2004). Petitioner fails to show that the state court's decision denying this claim was contrary to, or an unreasonable application of, Supreme Court law. *See Darden*, 477 U.S. at 181.

C. Time Limitation on Closing Argument

Next, Petitioner argues that the trial court violated his right to present a defense by placing a 20-minute time limit on closing arguments. A criminal defendant's right to present a defense includes the right to offer the testimony of witnesses and to present the defendant's version of the facts. *Washington v. Texas*, 388 U.S. 14, 19 (1967). This right, however, must

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"bow to accommodate other legitimate interests in the criminal trial process." *United States v. Scheffer*, 523 U.S. 303, 308 (1998) (citation omitted). A state violates the right to present a defense only when it prevents a defendant from introducing evidence essential to his defense. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986).

The Michigan Court of Appeals held that the time limit on closing argument did not deny Petitioner his right to present a defense. *Manners*, 2018 WL 4577431 at *3-4. The parties were informed of the time limits before closing arguments began. *Id.* The court rejected Petitioner's argument that he needed more time because the prosecutor presented more witnesses than the defense and because Petitioner had to address claimed inconsistencies in the victim's testimony. *Id.* at *4. The court reasoned that the case "was not as complex" as Petitioner suggested and that Petitioner "was afforded ample time to present his arguments and to address the evidence presented." *Id.*

This decision was not contrary to, or an unreasonable application of, clearly established Supreme Court precedent. "[C]losing argument for the defense is a basic element of the adversary factfinding process in a criminal trial." *Herring v. New York*, 422 U.S. 853, 858 (1975). It is "the last clear chance to persuade the trier of fact that there may be reasonable

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doubt of the defendant's guilt." *Id.* at 862. Nevertheless, "a trial judge is given great latitude in controlling the duration and limiting the scope of closing summations." *Id.* The judge may limit counsel to a "reasonable time." *Id.*

Here, Petitioner argues the time he was provided was not reasonable. Although the trial court gave each party 20 minutes for closing argument, Petitioner ultimately received about 40 minutes for his closing argument. He maintains that the defense's objections, his own pleas for more time, and other interruptions reduced his time to far less than 40 minutes. Petitioner caused many of the interruptions about which he complains by failing to follow court rules and making lengthy requests for more time. His argument was unnecessarily wordy. The trial court allowed Petitioner ample time to present his case through cross-examination of prosecution witnesses and his closing argument. The time limit placed on closing argument was not unreasonable and did not infringe on his right to present the defense's version of the facts. *See Herring*, 422 U.S. at 858; *Crane*, 476 U.S. at 690. Accordingly, habeas relief is denied on this claim.

D. Right of Self-Representation

In his fourth claim, Petitioner argues that the trial court violated his right to self-representation by refusing to allow him to present evidence of

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his prior convictions or to discuss Michigan Rule of Evidence 401 during closing argument. Petitioner argued, outside the jury's presence, that admission of his prior convictions for firearm possession would show the jury that he had never been convicted of a sexual-assault related crime. The trial court stated that standby counsel could question Petitioner about whether he had ever been arrested for or convicted of the types of crimes involved in this case. Petitioner agreed to the plan, but ultimately, Petitioner did not testify about his prior convictions. He did, however, state during closing argument that he had never been convicted of criminal sexual conduct.

The Sixth Amendment guarantees a criminal defendant the right to the assistance of counsel in his defense. U.S. Const. amend. VI. In *Faretta v. California*, 422 U.S. 806 (1975), the Supreme Court interpreted this right to counsel as encompassing "an independent constitutional right" of a defendant to represent himself at trial when the defendant "voluntarily and intelligently elects to do so." *Id.* at 807. The Michigan Court of Appeals held that the trial court's evidentiary and procedural rulings did not implicate Petitioner's constitutional right to self-representation. The trial court's rulings did not prevent Petitioner from cross-examining the prosecution's witnesses, lodging objections, deciding to take the stand, and presenting

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his own closing argument. *Manners*, 2018 WL 4577431 at *1. The record fully supports this conclusion.

The Michigan Court of Appeals held that this claim was more properly considered as concerning Petitioner's right to present a defense and held that the claim was waived and, alternatively, meritless. The court of appeals held that the trial court reasonably sought to mitigate the potential for prejudice by allowing Petitioner to testify that he had no prior convictions for the types of offenses at issue in his trial. *Id.* at *2. Petitioner's failure to testify in the manner allowed was not the result of court-imposed limitations. *Id.* The court of appeals also held that the trial court properly prohibited Petitioner from reading Rule 401 to the jury because, under Michigan law, counsel may not read the law to the jury. *Id.*

The Court defers to the state court's determination of state rules of evidence and holds that the state trial court's evidentiary rulings did not deprive Petitioner of his right to present a defense or his right to a fair trial. Petitioner could have testified that his criminal history did not include offenses related to those for which he was on trial. His failure to do so was his own decision, not the state trial court's. Petitioner also fails to show how his inability to read a rule of evidence to the jury violated his right to present a defense. The state court of appeals' decision was neither contrary to, nor

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an unreasonable application of, Supreme Court precedent. Accordingly, Petitioner is not entitled to habeas relief on his claim.

E. Admission of Incomplete Letter

Finally, Petitioner argues that the admission of a letter he wrote to the victim while he was jailed and awaiting trial violated Michigan Rule of Evidence 106[2] and his right to due process because the letter's first page was missing. The victim testified that the first page of the letter was unavailable because she had torn it up. Petitioner claims that the entire letter should have been excluded because the entire letter was not available.

State-court rulings on the admission of evidence under state law are typically beyond the scope of federal habeas courts review. *Cooper v. Sowders*, 837 F.2d 284, 286 (6th Cir. 1988). The argument that the state court violated Michigan's Rules of Evidence is not a cognizable claim on

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[2] Michigan Rule of Evidence 106 provides, "When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."

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federal habeas corpus review. *Hall v. Vasbinder*, 563 F.3d 222, 239 (6th Cir. 2009).

With respect to Petitioner's due process claim, the Michigan Court of Appeals held that the trial court offered "a reasonable solution" to Petitioner's objection to admission of the partial letter by noting that Petitioner could cross-examine the victim about the content of the first page and that he could testify about the missing page. *Manners*, 2018 WL 4577431 at *5. Petitioner's failure to pursue either approach did not render admission of the letter an abuse of discretion. *Id.*

"[S]tates have wide latitude with regard to evidentiary matters under the Due Process Clause." *Wilson v. Sheldon*, 874 F.3d 470, 476 (6th Cir. 2017). Petitioner cites no clearly established Supreme Court law holding that, as a matter of fundamental fairness, if only a portion of a written piece of evidence is available, the writing must be excluded in its entirety. "[I]f there is no 'clearly established Federal law, as determined by the Supreme Court' that supports a habeas petitioner's legal argument, the argument must fail." *Miskel v. Karnes*, 397 F.3d 446, 453 (6th Cir. 2005) (quoting 28 U.S.C. § 2254(d)(1)). Accordingly, habeas relief is denied on this claim.

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V. Certificate of Appealability

Before a prisoner who has been denied habeas relief may file an appeal, the prisoner "must first seek and obtain a [certificate of appealability.]" *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To receive a certificate of appealability, "a petitioner must show that reasonable jurists could 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." *Miller-El*, 537 U.S. at 336 (internal quotes and citations omitted).

Reasonable jurists would not find the Court's assessment of Petitioner's claims to be debatable or wrong. The Court therefore declines to issue a certificate of appealability.

VI. Conclusion

The Court **DENIES** the petition for a writ of habeas corpus (ECF No. 1) and **DECLINES** to issue a certificate of appealability to Petitioner.

Although jurists of reason would not debate this Court's resolution of Petitioner's claims, the issues are not frivolous. Therefore, an appeal could be taken in good faith, and the Court **GRANTS** Petitioner leave to proceed

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in forma pauperis on appeal. *See Foster v. Ludwick*, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002).

Finally, the Court **GRANTS** Petitioner's Motion to Clarify (ECF No. 21) and **DENIES AS MOOT** his Motion for Reconsideration (ECF No. 20).

SO ORDERED.

s/ Shalina D. Kumar
SHALINA D. KUMAR
United States District Judge

Dated: September 29, 2023

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