UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2710

Christopher W. Helton

Petitioner - Appellant

v.

Ronda Pash, Warden

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cv-01039-RK)

JUDGMENT

Before WOLLMAN, LOKEN and COLLOTON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. Appellant's motion for leave to proceed on appeal in forma pauperis is denied as moot. The appeal is dismissed.

December 21, 2017

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

/s/ Michael E. Gans

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Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cv-01039-RK)

ORDER

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

February 23, 2018

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

/s/ Michael E. Gans

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHRISTOPHER W. HELTON, Petitioner, vs. RONDA PASH, Respondent.	)))))))))	Case No. 4:16-cv-01039-RK-P

ORDER

Petitioner, a convicted state prisoner currently confined at the Crossroads Correctional Center in Cameron, Missouri, has filed *pro se* a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2011 convictions and sentences for second-degree murder, first-degree robbery, and armed criminal action, which were entered in the Circuit Court of Buchanan County, Missouri. Petitioner's convictions were affirmed on direct appeal. (Doc. 8-8.) Petitioner's motion for post-conviction relief filed pursuant to Missouri Supreme Court Rule 29.15 was denied following an evidentiary hearing. (Doc. 8-12.) For the reasons set forth below, Petitioner's petition for writ of habeas corpus is DENIED, a certificate of appealability is DENIED, and this case is DISMISSED.

I. Statement of Facts

In affirming the denial of post-conviction relief, the Missouri Court of Appeals, Western District, set forth the following facts:

> Helton was convicted of the attempted robbery and murder of Larry Norris ("Norris"), who was murdered early in the morning of August 25, 2009. Norris was the owner-operator of a Valvoline Express Care service station in St. Joseph. He was responsible for opening the station each morning, and he followed a regular routine in doing so. He would stop near the service station building and make sure that no one was hiding nearby. He would then park near the door and record his mileage for business expense purposes. Norris would unlock the door to the station, go inside, lock the door behind him, and then turn off the alarm. Until 7:00 a.m., he would review the books for the previous day. He would then go to the bank to make deposits, and return to open the business at 8:00 a.m.

APPENDIX G

On the morning of August 25, 2009, Norris began his normal routine for opening the station. He left home between 5:30 and 5:45 a.m., and drove to the station. When he arrived, he entered his mileage for the day in his log. However, around 6:15 or 6:30 a.m., Norris was found lying on the ground behind the station. He had been shot in the chest. He was pronounced dead at the scene.

The station's employees knew that Norris carried large sums of cash in connection with the operation of the business. They were also aware that he had begun carrying extra cash because of his son's upcoming wedding. On the morning of the murder, Norris had approximately $500 in his briefcase, and a little over $2,050 in his wallet.

Helton had been an employee of the Valvoline station for five or six years. On the night before the murder, Helton was smoking methamphetamine with a group of friends and suggested that they rob Norris. The initial plan was for Helton and Eric Osborn ("Osborn") to rob Norris and for Michael Limley ("Limley") to drive the getaway car. Osborn left his gun with Helton to be used in the robbery but ultimately did not participate. Helton stole a truck to be used as a get-away vehicle, which he parked three to four blocks from the station. He then drove away with Limley. They made several stops, including pulling into an alley for Helton to smoke more methamphetamine.

Sometime before Norris arrived at his place of business, which was likely around 5:50 a.m., Helton and Limley arrived back at the station. Limley hid behind a trash can thirty yards from the door. Helton squatted down next to the building with Osborn's gun.

When Norris arrived, he exited his vehicle and was confronted by Helton. Helton pulled out the gun and shot Norris. Limley fled in Helton's car, and Helton fled in the stolen truck. When they reunited at Helton's trailer home, Helton told Limley that he had disposed of the gun and admitted to murdering Norris. Helton also gave Limley the license plates from the stolen truck and asked him to destroy them.

After an investigation, the police arrested both Limley and Helton for the robbery and murder. Limley admitted his involvement, and reached a plea agreement in exchange for his testimony against Helton. For ease of analysis, additional facts, including facts related to the investigation by law enforcement, will be provided in the analysis section below.

The jury found Helton guilty of second-degree murder, armed criminal action, and attempted robbery. The jury acquitted Helton on a charge of tampering in connection with the theft of the truck. The court sentenced Helton to life in prison for the murder, twenty years for attempted robbery, and ten years for armed criminal action, all sentences to run concurrently. This Court affirmed

Helton's convictions and sentences in *State v. Helton*, 391 S.W.3d 924 (Mo. App. W.D. 2013) pursuant to Rule 30.25(b).

(Doc. 8-12 at 3-5) (footnotes omitted).

II. Legal Standard

In conducting habeas review pursuant to 28 U.S.C. § 2254, a federal court is limited to deciding whether a claim that was adjudicated on the merits in state court proceedings (1) resulted in a decision that is contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court, or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d). Before the state court findings may be set aside, a federal court must conclude that the state court's findings of fact lack even fair support in the record. *Marshall v. Lonberger*, 459 U.S. 422, 432 (1983). Credibility determinations are left for the state court to decide. *Graham v. Solem*, 728 F.2d 1533, 1540 (8th Cir. en banc), *cert. denied*, 469 U.S. 842 (1984). It is Petitioner's burden to establish by clear and convincing evidence that the state court findings are erroneous. 28 U.S.C. § 2254(e)(1).[1] Because the state court's findings of fact have fair support in the record and because Petitioner has failed to establish by clear and convincing evidence that the state court findings are erroneous, the Court defers to and adopts those factual conclusions.

III. Analysis

Petitioner asserts the following fifteen grounds for relief: (1) "trial counsel failed to investigate and call Mikel Helton as an alibi witness;" (2) "trial counsel pursued a defense that was fundamentally flawed and refuted by Mike Limley's deposition testimony;" (3) trial counsel was ineffective for failing "to preserve Helton's trial objection to Mike Limley's testimony regarding evidence of Helton's prior crimes in respect to purchasing illicit drugs;" (4) trial counsel failed to object to "Mike Limley's testimony that Helton was going to jail for unrelated crimes;" (5) trial counsel was ineffective for eliciting evidence of Helton's prior criminal misconduct when cross-examining Mike Limley; (6) trial counsel was ineffective for failing to "object to Rebecca Admire's testimony regarding Helton's prior criminal misconduct with

[1] In a proceeding instituted by an application for writ of habeas corpus by a person in custody pursuant to a judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by "clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

respect to illicit drugs or stolen tools at his residence;" (7) trial counsel was ineffective for failing to object to the Prosecutor's remark in Opening Statement regarding Helton's criminal proclivity; (8) trial counsel was ineffective for failing to ensure the jury was properly instructed as to the limited use of evidence concerning related crimes; (9) appellate counsel was ineffective for failing to "brief the preserved allegation of error regarding the trial court's refusal to give the jury a limiting instruction in connection with the testimony of Detective Scott Coates;" (10) trial counsel was ineffective for failing to "object to the Prosecutor knowingly presenting false testimony via State's witness Joshua Nolan;" (11) trial counsel was ineffective for failing to "object to the Prosecutor knowingly presenting false testimony via State's witness David Budine;" (12) trial counsel was ineffective for failing "to use readily available defense evidence to impeach the trial testimony of David Budine;" (13) trial counsel was ineffective for failing "to object to the fact the State did not prove all elements of second-degree murder beyond a reasonable" doubt; (14) "the cumulative effect of trial counsel's errors;" and (15) "the Prosecutor withheld exculpatory impeachment evidence from the defense." (Doc. 1 at 5-14.)

Respondent contends that Grounds 2-8 and 10-14 are procedurally defaulted claims of ineffective assistance of trial counsel, Ground 9 is a procedurally defaulted claim of ineffective assistance of appellate counsel, and that Ground 15 is a procedurally defaulted claim alleging a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). (Doc. 8 at 3.) Respondent further argues Ground 1 is the only "ground for relief properly preserved during state review proceedings," and is without merit. (*Id.*) The Court addresses those arguments below.

A. Ground 1 is without merit.

In Ground 1, Petitioner argues that the trial court erred in failing to call Petitioner's son, Mikel Helton, as a witness at trial. (Docs. 1 at 5; 2 at 18.) On direct appeal, the Missouri Court of Appeals, Western District, denied Ground 1 as follows:

> In order to establish ineffective assistance of counsel to warrant post-conviction relief, the movant must satisfy the two-prong test from *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Woods v. State*, 458 S.W.3d 352, 356 (Mo. App. W.D. 2014). First, the movant must show that counsel's performance was deficient by falling below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688. If counsel's performance was deficient, the movant must then prove that he was prejudiced by counsel's deficiency. *Id.* at 687. Prejudice occurs when there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A "reasonable probability" is a probability sufficient to undermine

confidence in the outcome. *Id.* There is a strong presumption that counsel's conduct was reasonable and effective. *Id.* at 689. To overcome this presumption, the movant must point to specific acts or omissions of counsel that, in light of all the circumstances, fell outside the wide range of effective assistance. *Id.* at 690.

Helton claims that his trial counsel's performance was ineffective because he failed to investigate and call Mikel as a witness. In order to prevail on a claim that counsel was ineffective for failure to call a witness, Helton must show: "(1) trial counsel knew or should have known of the existence of the witness; (2) the witness could be located through reasonable investigation; (3) the witness would testify; and (4) the witness's testimony would have produced a viable defense." *Edwards v. State*, 200 S.W.3d 500, 518 (Mo. banc 2006) (quoting *Hutchison v. State*, 150 S.W.3d 292, 304 (Mo. banc 2004)). Mikel testified at the evidentiary hearing that he would have testified at trial and there is no question that Mikel could have been located as he personally attended trial. In denying Helton's claim, the motion court found that Helton failed to show (1) that counsel knew or should have known of the existence of Mikel as a witness and (2) Mikel's testimony would have provided a viable defense.

We agree with the motion court that Mikel's testimony would not have provided a viable defense. A "viable defense" is one in which there is a reasonable probability that had Mikel testified, the result of the proceeding would have been different. *Deck v. State*, 381 S.W.3d 339, 346 (Mo. banc 2012). A "reasonable probability" is "a probability sufficient to undermine confidence in the outcome." *Id.* at 346 n.4.

First, Mikel's proposed testimony would not have precluded Helton's involvement in the attempted robbery and murder of Norris. The evidence at trial showed that Norris was probably murdered around 5:50 a.m., and then Helton and Limley used separate vehicles to flee the scene. There was no evidence presented at trial that it would have been impossible for Helton to commit the murder and return home before 6:15 a.m. Mikel's proposed testimony would not have precluded the possibility that Helton participated in Norris's murder.

Second, there was substantial additional evidence that suggested Helton was involved in the crimes. For example, Limley testified that the purpose of the attempted robbery was to steal money that Norris had on his person, which was more than customary due to his son's upcoming wedding. Norris's employees knew that Norris carried large sums of money and was carrying more than normal at the time of the murder. Helton had worked for Norris for six years, whereas Limley did not know Norris. The circumstances of the murder suggest someone was involved who had knowledge of Norris's morning routine and knew that Norris was carrying of large sums of money. Helton was in a position, as an employee of Norris for over five years, to know this information.

In addition, Helton's behavior after the crimes strongly suggests his involvement. When questioned by police regarding the murder, Helton lied and claimed that he went to bed at 11:00 p.m. the night before the murder and that woke up the next morning at 7:32 a.m. In separate questioning at the police station, Helton again denied being with Limley the night of the murder. After Helton was confronted with a videotape showing him with Limley at a gas station at 1:39 a.m. the morning of the murder, Helton changed his story and claimed he had dropped Limley off to steal a vehicle but then Helton returned home. Helton claimed he knew at that time Limley had a gun and was going to commit a robbery or theft but that he had no involvement with Norris's murder. Similarly, Helton's wife initially told police that Helton was asleep with her the entire night. Later, she admitted she had lied and that Helton was gone from their home from 1:30 a.m. until she got out of the shower the following morning at approximately 7:30 a.m. Helton's wife's testimony is corroborated by Limley's testimony that Helton was in fact with him that night and that he helped plan and execute the attempted robbery and murder of Norris.

Further, when police initially made contact with Helton the morning of the murder, Helton agreed to a search of his home and vehicle. Without informing police, Helton left the scene and went to speak with his wife at her place of employment. Helton instructed his wife's secretary to "call my house and tell Mike to get everything and get out, the cops are on their way." Helton also instructed his wife to call and relay a similar message. Helton also called Limley with the same message. Limley received the calls and proceeded to collect the stolen license plates, jewelry, Helton's meth pipe, gloves, Helton's home phone, and a pair of boots. Limley testified that some of these items were associated with the attempted robbery and murder. Limley was able to dispose of these items and flee before the police were able to search the trailer. A neighbor witnessed Limley throwing items out of the back window of the trailer and crawling out of the window to flee the area, while a police car was out front waiting to begin the search of the trailer. In addition to lying to law enforcement regarding his whereabouts the night and morning of the murder, Helton actively sought to dispose of evidence connected with Norris's murder.

There was substantial evidence presented at trial connecting Helton to the attempted robbery and murder of Norris, including Helton's own actions after the crime in obfuscating the investigation and disposing evidence. In addition, Mikel's proposed testimony would not have precluded Helton's participation in the murder. Had Mikel's testimony been presented at trial, it would not have provided a viable defense because we cannot say that there is a reasonable probability that the outcome of the trial would have been different. Because we have found that Mikel's testimony would not have constituted a viable defense, we do not need to consider the motion court's other finding that Helton failed to establish that counsel knew or should have known of the existence of Mikel as a witness. *See Rollins v. State*, 454 S.W.3d 380, 384 (Mo. App. W.D. 2015) (If either "the performance prong or the prejudice prong is not met, then we need not consider the other, as the claim of ineffective assistance of counsel must fail if either prong is not present").

The point is denied.

(Doc. 8-12 at 7-10.)

In denying Ground 1, the Missouri Court of Appeals made a reasonable determination that Petitioner did not suffer *Strickland* prejudice as a result of counsel's failure to investigate and call Mikel Helton as a witness at trial. The Missouri Court of Appeals concluded that, in light of the other testimony and the other inculpatory evidence presented at trial, the testimony of Mikel Helton "would not have constituted a viable defense." (*Id.*) Despite Petitioner's assertion that the Missouri Court of Appeals' use of "viable defense" is contrary to that in *Strickland*, the court made clear "[a] 'viable defense' is one in which there is a reasonable probability that had Mikel testified, the result of the proceeding would have been different." (*Id.* at 7.) Thus, this Court agrees that testimony of Mikel Helton would not have constituted a viable defense pursuant to the *Strickland* standard. Therefore, the state courts' determinations as to Ground 1 did not result 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 in "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *see* 28 U.S.C. §2254(d)(1) and (2), Ground 1 is denied.

B. Grounds 2-14 are procedurally defaulted.

Respondent argues Grounds 2-14 are procedurally defaulted because Petitioner failed to raise any of these issues on direct appeal or in his motion for post-conviction relief. "A habeas petitioner is required to pursue all available avenues of relief in the state courts before the federal courts will consider a claim." *Sloan v. Delo*, 54 F.3d 1371, 1381 (8th Cir. 1995), *cert. denied*, 516 U.S. 1056 (1996). "[S]tate prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process" before presenting those issues in an application for habeas relief in federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). "If a petitioner fails to exhaust state remedies and the court to which he should have presented his claim would now find it procedurally barred, there is a procedural default." *Sloan*, 54 F.3d at 1381. A federal court may not review procedurally defaulted claims "unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). Under the cause and prejudice test, cause "must be something *external* to the petitioner, something that cannot fairly be attributed to him." *Id.* at 753 (emphasis in original).

Petitioner admits he failed to raise any of Grounds 2-14 on direct appeal or in his motion for post-conviction relief. (Doc. 1 at 7, 9, 10, 12-14.) As a result, Petitioner's claims are procedurally defaulted. *Sweet v. Delo*, 125 F.3d 1144, 1149 (8th Cir. 1997) (recognizing that failure to present claims in the Missouri Courts at any stage of direct appeal or post-conviction proceedings is a procedural default), *cert. denied*, 523 U.S. 1010 (1998).

In an attempt to excuse the procedural default of Grounds 2-14, Petitioner argues the default should be excused under *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). (Doc. 12 at 1, 9.) Originally, in *Coleman*, the United States Supreme Court held that, because there is no constitutional right to counsel in a state post-conviction proceeding, an attorney's ignorance or inadvertence in a post-conviction proceeding does not qualify as cause to excuse a procedural default. *Coleman*, 501 U.S. at 752-54. In *Martinez*, however, the Court recognized a "narrow exception" to *Coleman* by holding that "[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." *Martinez*, 132 S. Ct. at 1315 (alteration added).

To excuse the procedural default of a claim of ineffective assistance of trial counsel under *Martinez*, Petitioner must establish that either (1) "the state courts did not appoint counsel in the initial-review collateral proceeding for a claim of ineffective assistance at trial," or (2) "appointed counsel in the initial-review collateral proceeding . . . was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984)." *Id.* at 1317. To satisfy the second circumstance, "the assistance rendered must have been constitutionally substandard and prejudice must have resulted therefrom." *Evans v. Luebbers*, 371 F.3d 438, 445 (8th Cir. 2004) (citing *Strickland*, 466 U.S. at 687). Furthermore, "[t]o overcome the default, a prisoner must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the [underlying] claim has some merit." *Martinez*, 132 S. Ct. at 1318.

Here, Petitioner does not allege facts to suggest counsel was ineffective other than to argue counsel did not assert these thirteen claims that Petitioner now contends his counsel should have raised in this action. However, the Supreme Court has explained that "counsel who files a merits brief need not (and should not) raise every nonfrivolous claim, but rather may select from among them in order to maximize the likelihood of success on appeal." *Smith v. Robbins*, 528 U.S. 259, 288 (2000). Upon review of the additional claims Petitioner now argues counsel should have raised, the Court finds these are without "some merit." *Martinez*, 132 S. Ct. at 1318.

Furthermore, as for Petitioner's ninth claim of ineffective assistance of appellate counsel, the Eighth Circuit has specifically declined to extend the narrow exception in *Martinez* to claims alleging ineffective assistance of appellate counsel. *See Dansby v. Hobbs*, 766 F.3d 809, 833-34 (8th Cir. 2014). The *Dansby* Court reasoned that "there is no logical necessity to expand *Martinez* from the ineffectiveness claim itself to the underlying claims" because "[a]s a practical matter, a petitioner in federal habeas needs only one winning claim to gain relief—if he's got a winning ineffectiveness claim he doesn't need another." *Id.* at 833-34 (internal quotation omitted). Accordingly, because Petitioner does not articulate Ground 9 as a claim of ineffective assistance of trial counsel, *Martinez* cannot excuse the procedural default of Ground 9.

Accordingly, Petitioner fails to show that a fundamental miscarriage of justice will result if his thirteen defaulted claims are not considered. *See Abdi v. Hatch*, 450 F.3d 334, 338 (8th Cir. 2006) (a petitioner must present new evidence that affirmatively demonstrates that he is actually innocent of the crime for which he was convicted in order to fit within the fundamental miscarriage of justice exception), *cert. denied,* 549 U.S. 1036 (2006). As a result, Petitioner fails to establish cause and prejudice for the procedural default of Grounds 2-14, and these claims are denied.

C. Ground 15 is procedurally defaulted and without merit.

In Petitioner's fifteenth ground for relief, he claims the prosecution concealed evidence in his 2011 trial that the State's witness Officer Scott Coates was being investigated by the FBI for aiding and abetting a felon in possession of a firearm which ultimately led to an indictment in 2013. Although Petitioner admits he did not raise this issue on direct appeal or in his motion for post-conviction relief because he did not discover this issue until 2014, Petitioner claims the Court can review this claim because he is still able to demonstrate cause and prejudice. In response, Respondent alleges Petitioner not only failed to raise this *Brady* claim on direct appeal and, therefore defaulted, but also further claims this issue is not material to Petitioner's case and must be denied.

In *Coleman*, the Supreme Court held:

> In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.

501 U.S. at 750.

Petitioner admits that he did not raise this *Brady* claim in his original Rule 29.15 *pro se* motion or on appeal. Thus, Ground 15 is procedurally defaulted. Because Petitioner's *Brady* claim is procedurally defaulted, it may not be reviewed by this Court unless Petitioner can demonstrate cause and actual prejudice, or that failure to consider his claim will result in a fundamental miscarriage of justice. *Id.*

In *Brady*, the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused … violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. "There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). "[P]rejudice within the compass of the 'cause and prejudice' requirement exists when suppressed evidence is 'material' for *Brady* purposes." *Banks v. Dretke*, 540 U.S. 668, 671 (2004); *see also Strickler*, 527 U.S. at 282 ("cause and prejudice parallel two of the three components of the alleged *Brady* violation itself").

At the outset, the Court finds Petitioner has presented no evidence that the St. Joseph Police Department was aware of the FBI investigation at the time of Helton's 2011 trial. Further, Petitioner has presented no evidence that, prior to his 2011 trial, the Buchanan County prosecutor had the ability to learn of a potential FBI investigation against Officer Coates that led to an indictment two years after Petitioner's trial. Regardless, Petitioner has failed to demonstrate how the evidence that Officer Coates was being investigated for returning a felon's gun to the felon would have been favorable to Petitioner. Lastly, as argued by Respondent, Petitioner has also failed to show that the evidence is material in light of the fact that evidence of an investigation of

Office Coates would not have been admissible under Missouri law. *See State v. Molina*, 272 S.W.3d 476, 478 (Mo. App. S.D. 2008) ("Absent proof of bias or relevance, a witness's uncharged "bad acts" are collateral, with no probative value.").

Accordingly, because Petitioner's *Brady* claim is procedurally defaulted and he has failed to demonstrate cause and actual prejudice or satisfy any of the elements of a *Brady* violation, Ground 15 is denied.

IV. Certificate of Appealability

Under 28 U.S.C. § 2253(c), the Court may issue a certificate of appealability only "where a petitioner has made a substantial showing of the denial of a constitutional right." To satisfy this standard, Petitioner must show that a "reasonable jurist" would find the district court ruling on the constitutional claim(s) "debatable or wrong." *Tennard v. Dretke*, 542 U.S. 274, 276 (2004). Because Petitioner has not met this standard, a certificate of appealability will be denied.

V. Conclusion

For the foregoing reasons, Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED, a certificate appealability is DENIED, and this case is DISMISSED.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: July 13, 2017

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