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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 23-1270

LOUIS CHANDLER,
Petitioner - Appellant,
v.
MIKE BROWN, Warden,
Respondent - Appellee.

FILED
May 09, 2025
KELLY L. STEPHENS,
Clerk

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

AMENDED JUDGMENT

On Appeal from the United States District Court for the Western District of Michigan at Marquette.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is REVERSED, Louis Chandler's petition for a writ of habeas corpus is CONDITIONALLY GRANTED, and the case is REMANDED for further proceedings consistent with the opinion of this court.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens
Kelly L. Stephens, Clerk

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)
File Name: 25a0123p.06

UNITED STATES COURT OF APPEALS
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LOUIS CHANDLER,

Petitioner-Appellant,

v.

No. 23-1270

MIKE BROWN, Warden,

Respondent-Appellee.

United States District Court for the Western District of Michigan at Marquette.
No. 2:19-cv-00263—Paul Lewis Maloney, District Judge.

Argued: April 30, 2024

Decided and Filed: May 9, 2025

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

COUNSEL

ARGUED: Matthew A. Monahan, STATE APPELLATE DEFENDER OFFICE, Detroit, Michigan, for Appellant. Jared D. Schultz, OFFICE OF THE

MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee. **ON BRIEF:** Matthew A. Monahan, STATE APPELLATE DEFENDER OFFICE, Detroit, Michigan, for Appellant. Jared D. Schultz, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee.

AMENDED OPINION

PER CURIAM. Petitioner-Appellant Louis Chandler, a Michigan prisoner, is serving concurrent terms of twenty-five to seventy-five years in prison for two convictions of first-degree criminal sexual conduct. Mich. Comp. Laws § 750.520b(2)(b). After exhausting his state-court appeals, Chandler filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254, claiming that the trial court infringed his right to present a complete defense. The district court denied the petition, and Chandler appeals. We REVERSE, conditionally GRANT Chandler's habeas corpus petition, and REMAND to the district court.

I. Background

A. Factual History

For twelve years, Chandler and his wife, Darlene Chandler ("Darlene"), cared for more than twenty foster children without incident. In 2010, the Chandlers

decided to foster A.C., an eight-year-old girl.[1] Because a prior Child Protective Services ("CPS") report had concluded that A.C. had a "history of false allegations," R. 9-10, PID 728, the foster-care agency warned the Chandlers to "watch" A.C. closely, R. 9-5, PID 382.

Roughly three months after the initial foster placement, the Chandlers informed A.C. that they intended to adopt her. Days later, A.C. told Darlene that Chandler had touched her inappropriately. Darlene was confused because, shortly after reporting this incident to Darlene, A.C. "laugh[ed] around the room . . . and climbed on [Chandler's] lap." R. 9-5, PID 380. Still, Darlene called the adoption agency to report A.C.'s allegations, and Chandler voluntarily left the home to give law enforcement, CPS, and the foster-care agency time to investigate.

A.C. told investigators that Chandler sexually abused her every day, and sometimes multiple times per day, both inside the home and at a local movie theater.[2] *Id.* at 375. The fostercare agency concluded that it had serious doubts regarding A.C.'s assertions, which were compounded by A.C.'s history of false allegations. The prosecutor also declined to charge Chandler at the time. However, the CPS investigator assigned to the case, Jennifer Schmidt, concluded that the allegations were substantiated under a

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[1] The State's brief uses the initials "A.H." instead of "A.C.," perhaps because the child's last name changed after adoption. For consistency, we use "A.C."

[2] CPS also interviewed other foster children who were staying with the Chandlers at the time, but the interviews did not turn up anything of note.

preponderance of the evidence standard. Schmidt had not read A.C.'s file, which detailed her history of false allegations, but another fostercare worker had told Schmidt that A.C. had made allegations of physical abuse in the past. After Schmidt's investigation, CPS removed A.C. from the Chandlers' home, and a new family eventually adopted her.[3] In the following years, a dispute arose within the Chandler family. During the dispute, the Chandlers' son–Louis Chandler Jr. ("Lou Jr.")–allegedly threatened to kill his mother, and Darlene testified that she was afraid of her son.

In 2014, Lou Jr.'s eight-year-old stepdaughter, Z.B., told her mother, Stephanie Chandler ("Stephanie"), that Chandler had touched her inappropriately. Lou Jr. and Stephanie filed a police report, which triggered a second criminal investigation, and told police that they knew of two other victims: Stephanie's best friend, Josefina Harden, and Norma Chandler ("Norma"), Chandler's sister.

Police also re-interviewed A.C., who was then twelve years old. Detective Svoboda, who authored a report following the interview, testified that A.C.'s account was inconsistent with the one she gave previously. In 2010, A.C. alleged that Chandler abused her every day, both at home and at the movie theater. But in her 2014 interview, A.C. told the detective that

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[3] CPS also filed a petition requesting jurisdiction of Austin, the Chandlers' adopted son. Although no record document discloses whether the petition was successful, Austin still lived with the Chandlers at the time of trial.

Chandler abused her four times total, including once after a church party, but never at a movie theater.

Police then obtained a search warrant for Chandler's computer, which yielded written stories of a sexual nature, including one containing child sexual abuse. Several other individuals used the computer in addition to Chandler, however, and Darlene testified that she once caught her adopted teenage son looking at "real[ly] bad" pornography on the computer. R. 9-5, PID 380. Darlene also testified that pornography would pop up randomly on its own when she used the computer. In 2015, the Kent County prosecutor charged Chandler with four counts of first-degree criminal sexual conduct stemming from the alleged sexual abuse of A.C., but he dismissed two of the charges before trial.

B. Chandler's Motions

The case had an "accelerated" timeline. *People v. Chandler*, No. 329605, 2017 WL 6502801, at *2 (Mich. Ct. App. Dec. 19, 2017). On April 10, 2015, the court appointed Jonathan Schildgen as Chandler's public defender. Chandler entered a not-guilty plea on April 22, and discovery began a day later. Schildgen received the first batch of discovery documents in mid-May. On May 26, the court set the case for trial on July 6–just seventy-five days after Chandler entered his not-guilty plea.

As Schildgen went through the initial document disclosure, he found the CPS report concluding that A.C. had a "history of making false allegations" against foster parents. R. 9-3, PID 256. Based on this

new information, Chandler successfully requested funds on June 11 to hire an expert on child-sexual-abuse allegations.

On June 16, Chandler moved to compel additional discovery, seeking "all Kent County DHS and CPS reports for [A.C.] containing and regarding references to prior false and prior unsubstantiated sexual abuse allegations." R. 9-10, PID 519. The court held a hearing on June 26 and denied the motion, concluding that Chandler was only entitled to records related to A.C.'s allegations against him and that the prosecution did not need to disclose any evidence of A.C.'s allegations against others.[4]

At the same hearing, Schildgen also requested an adjournment of the trial date, explaining that he still needed to obtain additional evidence and that his expert needed time to review the records. The court denied the request. On June 29, Chandler moved for reconsideration, arguing that the expedited timeline deprived him of the right to present a defense and made it impossible for Schildgen to represent him effectively. The court denied the request.

On the morning of the July 6 trial, Chandler again moved for an adjournment. Schildgen told the court that he had received additional discovery from the foster-care agency just a week earlier, including a report raising "serious doubts" as to whether sexual abuse occurred. *Id.* at 521. The new documents included the

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[4] The court told Schildgen to "go out and talk to [the CPS workers], you can sit down and meet with them. . . . [T]hat burden is on your shoulders." R. 9-10, PID 520.

names of other foster parents who A.C. had falsely accused of misconduct. Schildgen argued that, because he received the records only a week earlier, he needed additional time to go through them, to provide them to the expert, and to prepare for trial.

Schildgen also found a probate case involving A.C., in which Judge Kathleen Feeney issued an order with factual findings useful to Chandler. Judge Feeney's order concluded that A.C. had issues with lying and making false allegations, motivated in large part by her desire to be removed from foster care and returned to her birth parents. Schildgen told the trial court that Judge Feeney had agreed to make the records available for Chandler's proceedings, but she could only do so after returning from a two-week vacation. Schildgen thus explained that delaying trial would give him time to pick up Judge Feeney's records, go through them, and make them available to the expert.

The trial court rejected Chandler's arguments, concluding that any evidence of A.C.'s prior allegations was inadmissible because it was "extrinsic." R. 9-3, PID 258. Chandler could only raise the topic through cross-examination of A.C., but he would be "stuck with her answers." *Id*. The court also barred Chandler's expert from testifying at trial because Chandler had not complied with the court rule requiring disclosure of an expert's name "no later than 28 days before trial."[5] *See*

[5] The court authorized funding for the expert twenty-five days before trial, so it was impossible for Chandler to comply with the rule. Still, Chandler failed to disclose the expert's name until the day of trial, which he argued was because the expert had insufficient time to review the relevant evidence and create a report.

Mich. Ct. R. 6.201(A)(1). Finally, the trial court found no legitimate reason to postpone trial and denied Chandler's motion.

The trial court also barred Chandler's remaining proposed witnesses from testifying–more than twenty of them–because their names were not disclosed at least ten days before trial. Chandler argued that, because he was still receiving discovery until the day of trial, it would have been impossible to comply with this rule. Among those that Chandler told the trial court he intended to call to testify were: (1) three of A.C.'s previous foster families–the Hamblins, Nickersons, and Lamberts–who would have testified regarding A.C.'s character and her history of false allegations, including that a foster parent heard A.C. tell her therapist that "it's fun to lie." R. 9-9, PID 437; (2) Amanda Fraly, who would have testified that Lou Jr. pressured her to make a false allegation against Chandler before he contacted police; and (3) five foster-care-agency employees, who would have testified about A.C.'s false allegations and Chandler's twelve years as a "model caregiver." R. 9-5, PID 348. Chandler again tried to call witnesses on the second day of trial, arguing that he was denied his "constitutional right to present a defense," R. 9-4, PID 340, but the court refused to permit any witnesses not already "endorsed by the prosecution," *id.* at 339. In sum, the court's orders limited Chandler's time to prepare for trial, stymied his discovery, and prevented him from calling any witnesses.

C. Trial Testimony

A.C. testified at Chandler's trial and provided inconsistent testimony. At first, A.C. testified that (1) she was unable to recognize Chandler or Darlene, (2) she did not remember making any allegations against Chandler, (3) she did not remember any CPS investigation, (4) she did not remember any foster placement before her current home, and (5) she did not remember any time when she was touched inappropriately. Moments later, A.C.'s testimony changed. She testified that Chandler sexually abused her twice–both times in the Chandlers' home. A.C.'s testimony contradicted her 2010 allegations that Chandler abused her daily, both at home and elsewhere, and the account she gave Svoboda four months earlier that Chandler abused her four times, including once after a church party.

When asked about the inconsistent accounts on cross-examination, A.C. denied alleging in 2010 that Chandler's abuse happened daily, both inside and outside the home, and did not remember making the inconsistent statements to Svoboda months earlier. A.C. also reiterated that Chandler's abuse occurred twice in total. Schildgen attempted to challenge A.C.'s honesty by questioning her about her history of stealing from retail establishments, but the court cut off this line of questioning.

Finally, Schildgen asked A.C. about a lengthy list of allegations that she had purportedly made in the past. Schildgen learned of these prior allegations after obtaining CPS and foster-careagency records in the days before trial. The records included allegations that (1) a foster family's dog had attacked her, (2) a foster

parent abused her by swinging her around by her ponytail, (3) a foster parent refused to give her clothing, shoes, or bedding, (4) a foster parent hit her with a wooden spoon, (5) a cousin abused her, (6) a daycare provider had hit her, (7) a foster parent sexually abused her, (8) a foster parent made her eat soap, and (9) a foster-care worker raped her. In her testimony, A.C. admitted to making only two of these allegations, but she testified that both were true.[6] *Id.* For the others, A.C. either denied or did not remember making the allegations. Because the court had barred the defense from calling witnesses and citing the CPS records directly, there was no evidence at trial to contradict A.C.'s claim that she never made false allegations.

The prosecution then called three other witnesses who testified that Chandler had touched them inappropriately in the past.

Z.B. first testified that, over the span of two years, Chandler sexually abused her once or twice on each day they spent together. However, in a prior proceeding, Z.B. had given contradictory testimony. On cross-examination, Z.B. testified that she did not remember making the inconsistent statements.[7]

Then, Norma testified that Chandler had molested her nearly fifty years earlier when they were both children. At the time of the alleged abuse, Norma was

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[6] Of these, the only substantiated allegation was that a foster parent put a dab of soap in A.C.'s mouth after A.C. called the foster parent "a fucking bitch." R. 9-10, PID 812.

[7] Evidence that Chandler passed a polygraph test concerning Z.B.'s allegations was disallowed.

eight to ten years old and Chandler was "eleven or twelve." R. 9-5, PID 351.

Finally, Josefina Harden, Stephanie's "best friend," described an incident that occurred roughly seventeen years earlier. R. 9-4, PID 338. Harden testified that when she was about ten years old, she went to the Chandlers' home for dinner. Because Harden had just been playing in a sprinkler, she was wearing a bathing suit and had sand all over her body. Chandler took Harden to the bathroom to clean the sand off her body and allegedly used his hands to brush off the sand between her legs, including a "quick swipe" to clean the sand "just outside of . . . the genital area." *Id.* at 337.

The prosecution also called Thomas Cottrell for expert testimony. Cottrell was a professor at Western Michigan University and the executive of a company providing counseling to survivors of sexual assault. Cottrell testified that children often wait to disclose sexual abuse, and roughly half of survivors wait until adulthood. He explained that late disclosures generally occur for one of three reasons: the victim (1) realizes in adulthood that abuse occurred, (2) disassociates from the memory due to trauma, or (3) believes that the costs of disclosure outweigh the benefits. *Id.* Although victims' memories may degrade over time, Cottrell testified that memories can "become enriched" as an individual discusses them repeatedly. *Id.* at 370. Cottrell also testified that, because children have difficulty with chronology, they can "confound multiple occurrences of abuse," making it difficult to distinguish them. *Id.*

On cross-examination, Schildgen asked about false allegations of sexual abuse, and Cottrell testified that young children could come to believe lies by repeating them. Schildgen also asked about Reactive Attachment Disorder ("RAD"), a condition that occurs in children who have been deprived of a relationship with their parents at a young age. Cottrell explained that children diagnosed with RAD resist relationships, have difficulty trusting others, and are not "tuned into the consequences of their choices." *Id.* at 372. Schildgen asked about an incident where A.C. allegedly told a therapist that she enjoyed lying, which Cottrell said was "not atypical of [a RAD] diagnosis." *Id.*

The jury convicted Chandler on two counts of first-degree criminal sexual assault, and the trial court sentenced him to concurrent sentences of twenty-five to seventy-five years in prison. During sentencing, the judge said that he was "absolutely convinced that [Chandler is] a pedophile" and that he did not "ever want [Chandler] out of prison." R. 9-7, PID 420.

D. Remand

Chandler appealed, arguing that the trial court denied him his right to present a complete defense and incorrectly applied the state's evidentiary and procedural rules. The Michigan Court of Appeals remanded the case for an evidentiary hearing, which was held on August 24, 2017.

At the hearing, Schildgen testified that he had intended to call A.C.'s former foster parents and caseworkers to discuss specific instances of A.C.'s false allegations. Schildgen had also planned to call an expert

witness to testify about Reactive Attachment Disorder, proper interviewing techniques, and false accusations of sexual assault. Schildgen argued that, because he was unable to call any witnesses, the jury had only A.C.'s answers without any consideration of evidence impeaching her credibility.

Sandy and Randy Hamblin, the foster parents who cared for A.C. before the Chandlers, also testified. Sandy testified that although A.C. had difficulty attaching to her, she was comfortable with the men in her family. A.C. "wanted to sit on their lap[s] all the time," but Sandy discouraged this behavior because she had heard about A.C.'s prior allegations. R. 9-10, PID 763. Sandy also detailed several allegations that A.C. made against the Hamblins, which were later determined by CPS to be "unfounded." *Id.* at 764. As with Chandler, A.C. made allegations against the Hamblins days after she learned that they intended to adopt her. Randy corroborated Sandy's testimony and, when asked his opinion of A.C.'s character, testified that she "could not tell the truth." *Id.* at 766.

Jeff Kieliszewski, Chandler's expert witness, then testified about "confabulation," a type of memory error where an individual produces fabricated, distorted, or misrepresented memories. *Id.* at 768. He explained how a child in A.C.'s position could come to believe things that were not true, particularly after repeating the story many times, *id.,* and that, because memory degrades over time, it was a "red flag" that A.C. added additional details to her story years after it allegedly occurred. *Id.* at 770. Kieliszewski also discussed the ways in which the investigators failed to follow standard interviewing procedures with A.C. For example,

because a parent may influence a child's answers or pressure them to say something untrue, the guidelines for child forensic interviews "highly discourage" the presence of a support person. *Id.* at 769. But A.C.'s adoptive mother was allowed to sit next to her for the interview, which the defense would have argued made the answers unreliable. The guidelines also recommend recording interviews as a "best practice," but the detectives did not do so with A.C. *Id.* Instead, the detectives wrote a one-and-a-half-page report, which the expert said was "quite short" for a ninety-minute interview. *Id.* After reviewing A.C.'s record and the investigators' interviewing techniques, Kieliszewski concluded that there was a "substantial possibility of a false allegation report of sexual abuse." *Id.* at 774.

After the testimony concluded, the prosecution argued that a new trial was unnecessary because (a) the documents Schildgen received on the eve of trial had no new information compared to the documents he received earlier, (b) Chandler successfully made his core arguments by crossexamining the government's witnesses, and (c) the evidence and testimony that Chandler sought to present at trial was inadmissible.

The trial court agreed with the prosecution and rejected Chandler's request for a new trial, concluding that all the evidence Schildgen had sought to introduce was inadmissible, except for the expert's testimony regarding proper interviewing procedures. *Id.* at 781. It also determined that, to the extent any testimony was wrongly excluded, the error did not prejudice Chandler because the "evidence was clearly overwhelming." *Id.* at 779.

E. Appeal

Chandler's case returned to the Michigan Court of Appeals, where he again argued that the trial court had violated the state's trial rules and denied him the right to present a complete defense. In a brief footnote, the court rejected Chandler's constitutional claim, concluding that Chandler had a meaningful opportunity to present a complete defense because (1) he was represented by counsel at trial and (2) his counsel could argue through cross-examination that A.C. fabricated the allegations. *Chandler*, 2017 WL 6502801, at *4 n.3.

However, the court of appeals found Chandler's evidentiary and procedural claims meritorious. It first concluded that the trial court abused its discretion by denying Chandler's repeated requests for an adjournment without any "reasonable or principled basis." *Id.* at *3. The trial court further abused its discretion by barring all of Chandler's lay and expert witnesses from testifying because it was a disproportionally "extreme sanction" for a minor procedural violation. *Id.* Finally, because the trial court "employed the wrong framework when considering the admissibility of extrinsic evidence," it abused its discretion by excluding evidence of A.C.'s prior false allegations. *Id.* at *4. Instead, the trial court should have considered admitting the evidence under Michigan Rule of Evidence 404(b), *id.*, which allows admitting extrinsic evidence "for a[] purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident," Mich. R. Evid. 404(b). Thus, the jury should have heard evidence of A.C.'s prior false allegations.

Despite the trial court's multiple abuses of discretion, the court of appeals affirmed Chandler's conviction under the state's forgiving test for non-constitutional errors, which allows a court to overturn a conviction only if "it affirmatively appears that it is more probable than not that the error was outcome determinative." *Chandler*, 2017 WL 6502801, at *4 (quoting *People v. King*, 824 N.W.2d 258, 262 (Mich. Ct. App. 2012)). The court concluded that reversal was unwarranted because (1) Chandler challenged A.C.'s credibility during cross-examination by asking her about her prior inconsistent statements, (2) Chandler's expert would have discussed the same topics as the prosecution's expert, and (3) the testimony of Chandler's other instances of alleged sexual misconduct "bolstered the victim's credibility and supported a propensity inference." *Id.* at *5.

F. District Court

On December 30, 2019, Chandler filed this petition for habeas corpus in federal district court, arguing that he was denied several due process rights–including the right to present a complete defense, to call witnesses on his own behalf, and to a fair trial. On February 3, 2023, the magistrate issued a report and recommendation to deny Chandler's petition. Chandler objected to the report and recommendation, but the district court overruled the objections and adopted the recommendation. Although the district court concluded that Chandler could not establish that the state court unreasonably applied clearly established law, it granted a certificate of appealability because a reasonable jurist could disagree.

Chandler appeals.

II. Constitutional Claim

A. Standard of Review

"AEDPA requires habeas petitioners to exhaust their claims in state court before turning to a federal court for relief." *Stermer v. Warren*, 959 F.3d 704, 720 (6th Cir. 2020). A state court's resolution of a claim on the merits receives significant deference in federal habeas proceedings. *Id*. Accordingly, a federal court may grant relief to a petitioner only when a state court's decision is "(1) . . . contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) . . . based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* at 720-21 (alterations in original) (quoting 28 U.S.C. § 2254(d)). "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)).

An "unreasonable application of federal law is different from an incorrect application of federal law." *Williams v. Taylor*, 529 U.S. 362, 410 (2000). A federal court may grant the writ under the "contrary to" clause "if the state court arrives at a conclusion opposite to that reached by th[e] Court on a question of law or if the state court decides a case differently than th[e] Court has on a set of materially indistinguishable facts." *Id.* at 412-13. Under the "unreasonable application" clause, a federal court may grant the writ "if

the state court identifies the correct governing legal principle from th[e] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id*. at 413. To grant the writ on this basis, a state court's decision must rest on an error so "well understood and comprehended in existing law" that it goes "beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 101. In determining whether the state court made such an error, a federal court must consider the applicable constitutional rule's specificity. *Yarborough*, 541 U.S. at 664. "The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Id*.

"In a habeas appeal, we review questions of law de novo, including the ultimate decision to grant or deny the petition." *Stermer*, 959 F.3d at 720. Absent an evidentiary hearing, the district court's factual findings are also reviewed de novo. *Id.* We take care to consider the "entire record" in the case, including both the trial and remand hearing transcripts. *Mays v. Hines*, 592 U.S. 385, 392 (2021); *see also Adams v. Holland*, 330 F.3d 398, 406 (6th Cir. 2003) (holding that federal courts must consider habeas petitions "in light of the full record").

B. Right to Present a Complete Defense

The Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984). This right is rooted in several constitutional provisions, including the Fourteenth Amendment's Due Process Clause and the Sixth Amendment's various trial rights. *Crane v. Kentucky*, 476 U.S. 683, 690

(1986); *see also Strickland v. Washington*, 466 U.S. 668, 684-85 (1984) ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment."); *In re Oliver*, 333 U.S. 257, 273 (1948) ("A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense–a right to his day in court–are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.").

1. Key Precedents

Because Chandler must show that the state court contradicted or unreasonably applied clearly established federal law as established by the Supreme Court, we begin by surveying the key precedents concerning the right to present a complete defense. We survey both Supreme Court cases defining the right to present a complete defense and our own cases applying this clearly established federal law under the AEDPA standard.

Washington v. Texas, 388 U.S. 14 (1967)

Jackie Washington was charged with murder. *Id.* at 15. The only eyewitness was Charles Fuller, an alleged accomplice who had already been tried and convicted for the same crime. *Id.* at 16. Although Fuller shot the victim, not Washington, he was barred from testifying due to a Texas evidentiary rule that prohibited accomplices from testifying on behalf of the defense. *Id.* at 16-17. The Supreme Court explained that

Texas's rule "arbitrarily denied [Washington] the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense." *Id.* at 23. Because criminal defendants have the right to present their own "version of the facts," including the "right to present [their] own witnesses to establish a defense," the Court held that Texas's rule unconstitutionally denied Washington a fair trial. *Id.* at 19.

***Chambers v. Mississippi*, 410 U.S. 284 (1973)**

Leon Chambers was charged with murder, but no physical evidence tied him to the crime. *Id.* at 287, 289. Another man, Gable McDonald, confessed to the murder on four occasions and was arrested, but he later repudiated the confession. *Id.* at 287-88. At trial, Chambers tried to show that it was McDonald who had committed the murder. *Id.* at 289. One witness testified that he saw McDonald shoot the victim, and another witness testified that he saw McDonald immediately after the shooting with a gun in his hand. *Id.* A third witness testified that he was with Chambers during the shooting and did not see him holding a firearm. *Id.* Chambers called McDonald to testify, but he again repudiated his confession. *Id.* at 291. Due to a state rule of evidence, the trial court prevented Chambers from treating McDonald as an adverse witness and from impeaching his testimony. *Id.* Chambers was also prohibited from calling other witnesses to testify that they heard McDonald's confession. *Id.* at 292.

The Court overturned Chambers's conviction, explaining that by excluding evidence "critical to

Chambers' defense," the trial court "denied him a trial in accord with traditional and fundamental standards of due process." *Id.* at 302 ("Few rights are more fundamental than that of an accused to present witnesses in his own defense."). Notably, Chambers had competent counsel and called several strong eyewitnesses to support his alternate-suspect theory–including one who saw McDonald shoot the victim and another who saw him holding a gun–but the Court *still* held that Chambers was entitled to a new trial because he was denied the opportunity to present a complete defense.

Ungar v. Sarafite, 376 U.S. 575 (1964)

Sidney Ungar was charged with criminal contempt after giving witness testimony, and the court scheduled his contempt hearing roughly three weeks later. *Id.* at 580-81. On the day of the hearing, Ungar requested a continuance because he had hired a new lawyer five days earlier who was unfamiliar with the facts of the case. *Id.* at 590. The trial court rejected Ungar's request. *Id.* On appeal, the Supreme Court held that the denial of a continuance did not violate due process because the facts of the case were very simple–implicating only a single sentence of Ungar's testimony. *Id.* However, the court explained that, in a more complicated case, "a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality." *Id.* at 589.[8] Accordingly, a court may

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[8] *Chandler v. Fretag* is one such case where the denial of a continuance violated due process. 348 U.S. 3 (1954). There, a defendant originally waived his right to counsel, but then changed his mind once he learned he would be charged as a habitual

not arbitrarily deny a defendant's request to delay trial when it impedes the right to a fair trial.

***Ferensic v. Birkett*, 501 F.3d 469 (6th Cir. 2007)**

Robert Ferensic was tried on charges related to armed robbery and home invasion. *Id.* at 470. The entirety of the direct evidence against Ferensic consisted of two eyewitness identifications made by the victimized couple. *Id.* Ferensic intended to call two witnesses in his defense, but the trial court barred them from testifying. *Id.* at 471. The first would have testified that he saw the two culprits right before the crime and that Ferensic did not resemble either one. *Id.* The second witness, an expert on eyewitness identifications, would have testified about the potential unreliability of victim identifications. *Id.* at 471-72. Because the eyewitnesses' identifications were the strongest evidence against Ferensic, the panel concluded that the most important issue at trial was whether the identifications were accurate. *Id.* at 475-80. But the trial court's exclusions significantly undermined Ferensic's ability to cast doubt on the identifications. *Id.* Relying on *Chambers*, *Washington*, and other relevant Supreme Court precedents, the panel concluded that the state court acted contrary to clearly established

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offender. *Id*. at 4-5. The defendant requested a continuance so that he would have time to find new counsel, but the trial court denied the request. *Id*. The Court held that the denial violated due process. *Id*. at 10 ("A necessary corollary [of the right to counsel] is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth.").

federal law in denying Ferensic a meaningful opportunity to present a complete defense. *Id.*

2. Application

As these cases illustrate, a criminal defendant must be afforded "a fair opportunity to defend against the State's accusations" through witnesses and evidence of his own. *Chambers*, 410 U.S. at 294. Not only is that rule framed at a high level of generality, but it is also limited in its scope. "A defendant's right to present relevant evidence . . . is subject to reasonable restrictions," *United States v. Scheffer*, 523 U.S. 303, 308 (1998), and "may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process," *Rock v. Arkansas*, 483 U.S. 44, 55 (1987) (quoting *Chambers*, 410 U.S. at 295). Indeed, state "rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *Scheffer*, 523 U.S. at 308. The application of such rules runs afoul of the Constitution only when they render a trial "fundamentally unfair." *Chambers*, 410 U.S. at 290.

A trial is "fundamentally unfair" under the Due Process Clause when a court excludes (1) evidence that is "central to the defendant's claim of innocence" (2) "[i]n the absence of any valid state justification." *Crane*, 476 U.S. at 690-91; *see Holmes v. South Carolina*, 547 U.S. 319, 325-26 (2006). That is so whether exclusion results from an invalid state rule or a valid but misapplied one. *Cf. Lewis v. Jeffers*, 497 U.S. 764, 780 (1990) (error of state law cognizable only if decision "so arbitrary or capricious as to constitute an independent due process" violation). Even if no state

rule supported a state court's action–or, indeed, even if a state rule actively forbade it–the Constitution is implicated only if the action was "arbitrary" or failed to "rationally serve any discernible purpose." *Nevada v. Jackson*, 569 U.S. 505, 509 (2013) (per curiam); *cf. Estelle v. McGuire*, 502 U.S. 62, 67-68, 71-72 (1991).

That sets a very high bar, and rightly so. "In any given criminal case the trial judge is called upon to make dozens, sometimes hundreds, of decisions concerning the admissibility of evidence." *Crane*, 476 U.S. at 689. As much as we may hope otherwise, "the reality of the human fallibility of the participants" means that "there can be no such thing as an error-free, perfect trial, . . . and the Constitution does not guarantee such a trial." *United States v. Hasting*, 461 U.S. 499, 508-09 (1983). The Due Process Clause, in other words, requires a fair trial, not a flawless one. "If the contrary were true, then every erroneous decision by a state court on state law would come to [the Supreme Court] as a federal constitutional question." *Engle v. Isaac*, 456 U.S. 107, 121 n. 21 (1982) (quotation omitted). To violate due process, a state court must do more than err–it must deprive the defendant of "meaningful adversarial testing" of the State's case. *Crane*, 476 U.S. at 690-91.

Given how general this rule is, AEDPA's "demanding" standard requires us to proceed with yet greater caution. *Dunn v. Madison*, 583 U.S. 10, 12, 14 (2017). "Because AEDPA authorizes federal courts to grant relief only when state courts act *unreasonably*, it follows that the more general the rule at issue–and thus the greater the potential for reasoned disagreement

among fair-minded judges–the more leeway state courts have in reaching outcomes in case-by-case determinations." *Renico v. Lett*, 559 U.S. 766, 776 (2010) (brackets and quotation omitted). In sum, for us to grant relief in this case, we must hold that no reasonable jurist could dispute (1) that the excluded evidence was "central to the defendant's claim of innocence," and (2) that its exclusion cannot be defended by "any valid state justification." *Crane*, 476 U.S. at 690-91; *see also Andrew v. White*, 145 S. Ct. 75, 82 (2025) (per curiam). Put another way, the trial court's decision must have been "so arbitrary or capricious" as to fall outside "the universe of plausible evidentiary rulings." *Coningford v. Rhode Island*, 640 F.3d 478, 484-85 (1st Cir. 2011) (applying AEDPA deference).

In our view, this is the extraordinary case in which that threshold is met. Start with whether a fairminded jurist could find that the evidence was not "central to [Chandler's] claim of innocence." *Crane*, 476 U.S. at 690. Other than A.C.'s testimony, there was no direct evidence supporting the charges against Chandler. Accordingly, the decisive issue at trial was the reliability of A.C.'s testimony, and specifically whether she had a reason to fabricate allegations against Chandler. To this end, Chandler intended to (1) call the Hamblins, A.C.'s prior foster parents, who would have testified that "shortly after [they] advised [her] that [they] were going to adopt her," A.C. falsely "alleg[ed] physical abuse," including that they "pulled her by her hair and spun her around," and that A.C. admitted it was "fun to lie," R. 9-10, PID 764; (2) call an expert witness, who would have testified that it is a "red flag" when a child adds new details to a story years later, and a sign that

she may have "been coached" or have "confabulat[ed]" the allegations, R. 9-10, PID 770; and (3) introduce records from a proceeding before Judge Feeney, a family court judge, who had concluded that A.C. makes "false accusations" against foster parents to "manipulate the system" and "make her way back to [her] birth parents," R. 9-3, PID 257; *see also* R. 9-10, PID 388-89. The jury did not hear this evidence. When A.C. denied ever having made false allegations on cross-examination, the trial court told Chandler he was "stuck" with her answers and could not challenge them with evidence of his own. R. 9-3, PID 258. The lack of evidence of bias became the lynchpin of the State's case for Chandler's guilt.

But do not take our word for it. Just consider how the State framed its case against Chandler in its summation:

> MR. EARLEY: . . . You've heard the entire story. That's why we went back for [unintelligible] years. So that you could hear that this isn't just a one-time thing that [A.C.] made up in order to go back to her birth parents, which is hysterical.
>
> [The defense claims that A.C.] makes up this sexual abuse allegation so that she can get back to her birth parents. . . . Is there any evidence that there's been any problems with [A.C.'s] false allegations? Nonsense.
>
> False allegations, I've heard [defense counsel] Mr. Schildgen say I don't know how many

times throughout this week, have you heard any? Did you hear of any?

He stood here on Tuesday morning [in his opening statement] and said, ["W]e will prove to you that [A.C.] has made false allegations and she'll admit that it's fun to lie.["] What else did I quote here? ["]We intend to prove that [A.C.] has lied.["] That's what he said. One day into it.

He keeps telling you that this–this stack [presumably referring to A.C.'s social file], he keeps telling you, that this stack includes false allegations. Well, what are they? Those are the doubts that you have in this case? What are they?

They're not pointed out to you. He likes waving it around and questioning [A.C.] and what did she admit to? She admitted to taking something from a brother or sister at eight-year-old or younger, wow.

And, she admits to taking something from a Wal-Mart at eight-years-old or younger. He's–he's making you or trying to make you believe that she was what, pushing out some flat screens? I mean, she's that diabolical at eight-years old. That she's just committing thefts at stores and stealing from her brother or sister.

No evidence whatsoever that she's made any false allegation, especially a sexual allegation

> against anybody. . . . You didn't hear any evidence about a false allegation of abuse. None.

R. 9-6, PID 399. "A prosecutor's heavy reliance on testimony" or the lack thereof "during closing argument evidences its importance in the case." *Reiner v. Woods*, 955 F.3d 549, 557 (6th Cir. 2020); *see also House v. Bell*, 547 U.S. 518, 540-41 (2006). Just so here. The State believed Chandler's failure to produce evidence "that [A.C.] made up [this allegation] in order to go back to her birth parents" to all but resolve the question of his guilt. R. 9-6, PID 399. No fairminded jurist could deny that this evidence was central to Chandler's defense.

Now consider whether a fairminded jurist could find that the exclusion of Chandler's evidence furthered a valid state justification. The trial court offered two rationales for exclusion, but the state intermediate court rejected both–and for good reason. The first justification was that Chandler's counsel failed to disclose these witnesses in time, in violation of Michigan Court Rule 6.201, which requires "the names and addresses of all lay and expert witnesses whom [a] party may call at trial" to be produced "no later than 28 days before trial," except for "good cause shown." Mich. Ct. R. 6.201(A), (I).

The trouble with this argument, however, is that it was only in the few days before trial that Chandler's counsel received a report previously "being held in camera by the [c]ourt" that "actually name[d] names and ma[d]e[] exact allegations . . . that this little girl has a history of lying and making false allegations" against her foster parents. R. 9-9, PID 433-34. And it

was only on "the morning of trial" that he received the unsealed records from Judge Feeney, who had "been on vacation for [the past] two weeks." R. 9-9, PID 434. No one disputes that Chandler's counsel acted competently and conducted a reasonable investigation; his hands were tied, however, by "the abbreviated timeline" imposed upon him by the trial court, which forced Chandler to trial within 75 days of his arraignment. *Chandler*, 2017 WL 6502801, at *5 n.6. It should come as no surprise, then, that the Michigan Court of Appeals held that the trial court's decision to exclude this evidence–in lieu of the continuance Chandler's counsel repeatedly sought–lacked a "reasonable or principled basis." *Id.* at *3. (Indeed, as to Chandler's expert witness, the trial court waited until "there were fewer than 28 days before trial" to even *authorize* Chandler's counsel to retain such an expert, *id.*, making it impossible for him to comply with the rule.) No fairminded jurist could conclude that the trial court's "myopic insistence upon expeditiousness" furthered a valid state justification. *Ungar*, 376 U.S. at 589.

The trial court's second justification fails too. The court held that Chandler's lay witnesses sought to offer "extrinsic evidence" of specific "incidents of conduct" to "attack[] . . . the credibility of [a] witness," R. 9-5, PID 349, in violation of Michigan Rule of Evidence 608(b).

That rationale made no sense then and is no better now. As the Michigan Court of Appeals explained, "the trial court employed the wrong framework" in evaluating this evidence. *Chandler*, 2017 WL 6502801, at *4. Michigan's Rule 608(b) (much like its federal counterpart) bars only evidence that relates solely to "the

witness's character for truthfulness," not evidence that is admitted for another purpose–even if it happens to bear on truthfulness. Mich. R. Evid. 608(b); *see People v. Williams*, 330 N.W.2d 823, 829 (Mich. 1982) (Rule 608(b) bars only "evidence bearing solely on . . . the particular character trait of truthfulness or untruthfulness"). The appropriate framework, instead, was Michigan Rule of Evidence 404(b). And Chandler's counsel, in fact, "specifically argued that this evidence of the victim's previous fabrications was admissible under [Rule] 404(b) to show the victim's motive for lying and to establish that the victim had a common scheme, plan or design in making false accusations in order to be removed from foster care placements," but the district court "fail[ed] to even consider" Chandler's arguments. *Chandler*, 2017 WL 6502801, at *3. Not only was such evidence clearly admissible under Rule 404(b), but it also fell well within the heartland of "universally accepted reasons" given under that rule (and its federal equivalent)–that a person's prior acts show her "motive" and "malice" to commit the act at issue. *Spencer v. Texas*, 385 U.S. 554, 560-61 (1967). That was precisely what Chandler wished to do here: Prove that "A.C. fabricated her claims . . . because she did not want to be adopted" and had done the same before. *Chandler*, 2017 WL 6502801, at *5.

Could the trial court's decision be rationally justified as serving Rule 608(b)'s *purposes*, putting to one side the rule's terms? No. The "widely accepted" justification for Rule 608(b) and its state analogues is to conserve "judicial resources by avoiding mini-trials on collateral issues." *Jackson*, 569 U.S. at 509-10 (quotation omitted). Whether a witness is biased is not a

collateral issue–it is "almost always relevant" because it explains why a witness might "slant, unconsciously or otherwise, his testimony in favor or against a party." *United States v. Abel*, 469 U.S. 45, 52 (1984) (noting such evidence's admissibility at common law); *see also* 2 John Henry Wigmore, *A Treatise on the System of Evidence in Trials at Common Law* § 948, at 1083 (1st ed. 1904) (same). It is of course true that such evidence might also impugn a witness's credibility more generally. But that has never been a rationale for the exclusion of such evidence. As then- Justice Rehnquist put it: "It would be a strange rule of law which held that relevant, competent evidence which tended to show bias on the part of a witness was nonetheless inadmissible because it also tended to show that the witness was a liar." *Abel*, 469 U.S. at 56. No fairminded jurist could conclude that the exclusion of Chandler's evidence served a valid state purpose.

In sum, no fairminded jurist could disagree that the excluded evidence was (1) central to Chandler's claim of innocence, and (2) excluded without any valid state justification. So Chandler has shown a violation of the Due Process Clause under AEDPA.

a. The State Court's Constitutional Rationale

Although the state court of appeals chastised the trial court for its procedural and evidentiary errors, it rejected Chandler's constitutional claim on two bases. Neither is persuasive.

First, the court concluded that Chandler had a fair trial because he was represented by counsel. *Chandler*, 2017 WL 6502801, at *4 n.3. To be sure, denying

Chandler counsel would have been unconstitutional, but the mere presence of counsel does not necessarily make a trial constitutionally adequate. Indeed, each of the defendants in *Chambers*, *Washington*, and *Ferensic* had counsel at trial–but the mere presence of competent counsel was insufficient to render their trials fair. Thus, as this court has recognized, the Supreme Court's case law clearly establishes that Chandler's claim may not be defeated on the basis that he was represented by counsel at trial.

Second, the state court determined that Chandler had a fair trial because defense counsel "presented defendant's argument that the victim fabricated the allegations against defendant." *Id.* It is true that defense counsel tried to present Chandler's side of the story through crossexamination– by suggesting that A.C. had a history of false allegations and had a motive to accuse Chandler of abuse. But at every step, the trial court prevented Chandler from producing any evidentiary support for his position, making his defense appear unsubstantiated and perhaps even manufactured. And from the outset, the trial court clearly indicated that that it believed Chandler's defense to be baseless, telling him: "You're trying to base a defense here on the fact that, well, she's lied about all these other things, so that's my defense for the jury. She's lying about this. You can argue that if there's a basis to argue that, but there isn't at this point." R. 9-3, PID 258.

Chambers and *Washington* make clear, however, that simply allowing a defendant to raise a defense–even with some evidentiary support–is not always

sufficient to ensure a fair trial. In *Chambers,* for example, eyewitnesses confirmed the defendant's alibi and testified that McDonald was the shooter. 410 U.S. at 288-89. And in *Washington*, the defendant testified on his own behalf that the accomplice was the actual shooter–testimony that was strengthened by the fact that the accomplice was already convicted of the murder. 388 U.S. at 16. In each case, the defendant presented *some* defense, it is true. But he still was denied his right to present a *complete* defense because the trial court excluded "critical evidence" implicating "constitutional rights directly affecting the ascertainment of guilt." *Chambers*, 410 U.S. at 302.

Chandler's right to present a complete defense was clearly circumscribed even more severely than in *Chambers* or *Washington*. Unlike in those cases, the trial court barred Chandler from calling *any* witnesses or introducing *any* evidence on the most critical element of his defense–whether A.C.'s testimony was biased by her desire to return to her birth parents. Thus, the state appellate court unreasonably applied the Supreme Court's governing principles to Chandler's case and improperly denied his constitutional claim.[9] *See Williams*, 529 U.S. at 413.

b. The State's Counterarguments

The State's counterarguments do not move the needle either. The State argues that we should afford

[9] Because Chandler's rights were violated by the trial court's exclusion of Chandler's witnesses and evidence, we do not decide whether its refusal to delay trial also constituted a constitutional violation.

no deference to a state court's "pro-petitioner" resolution of an issue, citing *Daniels v. Lafler*, 501 F.3d 735, 740 (6th Cir. 2007). The State misreads *Daniels*, a case in which the state court considered the defendant's constitutional challenge *hypothetically*. *Id.* at 739-40. The state court did not decide the constitutional issue on the merits, nor did it make any evidentiary rulings that were decisive in the case. *Id.* A panel of this court reviewed the constitutional issue de novo because AEDPA deference "applies only to claims 'adjudicated on the merits in State court proceedings,' and the standard of review it mandates depends on an assessment of *an actual decision* made by the state court." *Id.* at 740 (quoting *Eddleman v. McKee*, 471 F.3d 576, 583 n.3 (6th Cir. 2006)). By contrast, the state court's holdings in Chandler's case were not hypothetical– they were adjudications on the merits. Accordingly, we accept the state court's holdings that the trial court repeatedly abused its discretion by violating the state's evidentiary and procedural rules.

The State argues that *Chambers* and *Washington* do not govern Chandler's case because they are distinguishable. In *Chambers* and *Washington*, the court wrongly excluded evidence showing that another person had committed the charged crime. By contrast, the evidence in Chandler's case concerned the credibility of the accuser, and there is no precise Supreme Court precedent holding that "the right to present a defense is violated if witnesses are precluded from testifying about an accuser's past conduct consistent with a common plan or scheme." Appellee's Brief at 34.

But AEDPA does *not* require an "identical factual pattern before a legal rule must be applied." *White v.*

Woodall, 572 U.S. 415, 427 (2014) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007)). As the Supreme Court recently explained in *Andrew v. White*: "General legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court." 145 S. Ct. 75, 82 (2025) (per curiam). "[C]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." *Id.* (quoting *Woodall*, 572 U.S. at 427). The principle at issue here– that the Constitution "prohibits the exclusion of defense evidence under rules that serve no legitimate purpose," *Holmes*, 547 U.S. at 326–is one that the "Court itself has relied on over the course of decades," *Andrew*, 145 S. Ct. at 83.

The State may not defeat Chandler's constitutional claim simply because it is premised on new facts. The State next argues that Chandler had a fair opportunity to present a defense because the trial court excluded only duplicative or marginal evidence.[10] For support, the State cites *United States v. Scheffer,* 523 U.S. 303 (1998), a case that clarified *Chambers*'s holding that a constitutional violation occurs when a trial court "significantly undermine[s] the fundamental elements of the defendant's defense." *Id.* at 315. In *Scheffer*, the court-martialed defendant was prohibited from admitting polygraph evidence to bolster his own credibility, but he was allowed to introduce other factual evidence. *Id.* at 306, 317. The Court concluded that because the "court members heard all

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10 Below, we discuss in detail why the evidence excluded in Chandler's trial was neither duplicative nor marginal. *See infra*, Part III(C)(1). That analysis is equally applicable here.

the relevant details of the charged offense from the perspective of the accused," the exclusion of the polygraph did not "implicate any significant interest of the accused." *Id.* at 316-17. The State argues that, like in *Scheffer*, the jury had the opportunity to hear Chandler's side of the story.

However, *Scheffer* differs from this case in important ways. Crucially, the *Scheffer* court excluded only a single piece of evidence, and it had a good reason to do so: polygraph evidence is of questionable reliability. *Id.* at 306-07, 312 ("Although the degree of reliability of polygraph evidence may depend upon a variety of identifiable factors, there is simply no way to know in a particular case whether a polygraph examiner's conclusion is accurate, because certain doubts and uncertainties plague even the best polygraph exams."). Aside from a single piece of potentially unreliable evidence, Scheffer still presented the rest of his defense. *Id.* at 317. By contrast, the trial court here rushed Chandler to trial, prohibited him from calling any witnesses, and curtailed his ability to acquire and present key evidence. And unlike the polygraph ban in *Scheffer*, there was no sound rationale to justify the trial court's actions. *See Chandler*, 2017 WL 6502801, at *3-4. Thus, the trial court hindered Chandler's defense far more significantly than in *Scheffer*.

The question at this stage is not whether Chandler was able to make some of his arguments, but whether the trial court "significantly undermined [the] fundamental elements of [his] defense." *Scheffer*, 523 U.S. at 315. Here, as discussed above, there was no physical evidence to support the allegations against Chandler,

so A.C.'s testimony was indispensable to his conviction. The trial court, however, "significantly undermined" Chandler's ability to present evidence of A.C.'s bias. *Id.* Chandler's constitutional claim cannot be defeated simply because the prosecution's witnesses may have made a few helpful admissions during cross-examination, all of which Chandler was barred from supporting with evidence of his own. Ultimately, the trial court allowed the prosecution to present its side of the story but prevented Chandler from doing the same.

The State finally points to *Nevada v. Jackson*, but that case is far afield from this one. 569 U.S. 505 (2013) (per curiam). In *Jackson*, a state-court defendant was convicted of raping his girlfriend. 569 U.S. at 506. The defendant sought to show that his girlfriend was untrustworthy by introducing evidence that she had previously made uncorroborated sexual-assault allegations. *Id.* The state court excluded the evidence under the State's analogue to Evidence Rule 608(b), which bars a party from using extrinsic evidence solely to show prior lies a witness has told. *Id.* The Court held that the state's exclusion of the evidence was not "arbitrary"–and thus was constitutional–because it was based on the proper application of a "widely accepted" rule of evidence. *Id.* at 509-10. A case in which a state court properly applied standard evidentiary rules to exclude testimony "on collateral issues," *id.* at 509 (quotation omitted), cannot be compared with a case in which a court flouted those same rules to exclude testimony as to bias, a "class of facts" that courts have always permitted to "be offered either by extrinsic testimony or by crossexamination, without

discrimination against the former," 2 Wigmore, *supra*, § 948, at 1083; *see also Abel*, 469 U.S. at 52.

III. Eligibility for Relief

A. Standard of Review

In this circuit we "always" apply *Brecht*'s "actual prejudice" test in habeas proceedings to assess whether constitutional errors are prejudicial. *O'Neal v. Balcarcel*, 933 F.3d 625 (6th Cir. 2019). Additionally, we apply the AEDPA standard to a state court's "harmless beyond a reasonable doubt" assessment of constitutional errors pursuant to *Chapman v. California*, 386 U.S. 18, 24 (1967). *See Brown v. Davenport*, 596 U.S. 118, 127 (2022). But we can do so only when the state court actually conducted a *Chapman* analysis. Here, because the state court concluded that no constitutional error occurred in the first place, it never applied *Chapman* to Chandler's case. *See Chandler*, 2017 WL 6502801, at *4 n.3. Instead, the state court assessed the trial court's errors under the state's more forgiving test for *non-constitutional* errors. *Chandler*, 2017 WL 6502801, at *4. Under that test, the state court could overturn Chandler's conviction only if "it affirmatively appear[ed] that it [was] more probable than not that the error was outcome determinative." *Id.* (quoting *King*, 824 N.W.2d at 262). Because we are conducting habeas review of a state-court decision that lacked any analysis under *Chapman*, we analyze Chandler's eligibility for relief under the *Brecht* test alone. *See Davenport*, 596 U.S. at 138.

Under *Brecht*, Chandler is entitled to relief if we have "grave doubt[,] not absolute certainty,"

Davenport, 596 U.S. at 135, "about whether a trial error of federal law had substantial and injurious effect or influence in determining the jury's verdict," *Davis v. Ayala*, 576 U.S. 257, 267-68 (2015) (quoting *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995)), *see also McAninch*, 513 U.S. at 436 ("When a federal judge in a habeas proceeding is in grave doubt about whether a trial error of federal law had 'substantial and injurious effect or influence in determining the jury's verdict,' that error is not harmless. And, the petitioner must win."). If, "in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error," then there is "grave doubt" about whether the error affected the jury's verdict. *McAninch*, 513 U.S. at 435; *see also Davenport*, 596 U.S. at 136 ("[W]here AEDPA asks whether *every* fairminded jurist would agree that an error was prejudicial, *Brecht* asks only whether a federal habeas court *itself* harbors grave doubt about the petitioner's verdict."). "[P]rosecutors bear the burden of proof" to show that a constitutional error did not have a substantial and injurious effect on the jury's verdict. *Stoner v. Sowders*, 997 F.2d 209, 213 (6th Cir. 1993); *see also Jaradat v. Williams*, 591 F.3d 863, 869 (6th Cir. 2010) ("Under the *Brecht* standard, the Government has the burden of showing that the error was harmless.").[11]

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[11] "[B]ecause '[t]he prejudice inquiry is not the same as the sufficiency of the evidence analysis,'" a petitioner cannot be denied relief simply because there is sufficient evidence to support a conviction. *Ferensic*, 501 F.3d at 474 (quoting *Richey v. Mitchell*, 395 F.3d 660, 687 (6th Cir. 2005), *overruled on other grounds by Bradshaw v. Richey*, 546 U.S. 74 (2005)). We are thus prohibited

In applying *Brecht*, we consider "the whole body of law"–including lower-court cases– to determine whether an error was prejudicial. *Davenport*, 596 U.S. at 136. And in determining whether the jury's deliberation was affected by the error, we review the entire record de novo. *See Jaradat*, 591 F.3d at 869 ("The analysis should result from 'examination of the proceedings in their entirety.'" (quoting *Kotteakos v. United States*, 328 U.S. 750, 762 (1946))). The impact of the trial court's errors depends in part on the strength of the evidence supporting a conviction. Thus, "a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." *Towns v. Smith*, 395 F.3d 251, 260 (6th Cir. 2005) (quoting *Strickland*, 466 U.S. at 696).

B. Grave Doubt

Ferensic's facts are very similar to those here. *See Ferensic*, 501 F.3d at 470. In *Ferensic*, the only direct evidence of the defendant's guilt was the identifications made by the victimized couple. *Id.* The defense intended to undermine the veracity of the identifications by calling two witnesses, but the trial court barred both from testifying. *Id.* at 471. The first would have testified that he saw the two culprits on the night of the crime, and that Ferensic resembled neither one; and the second would have testified about the

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"from simply focusing on the sufficiency of the evidence, especially where it entails 'stripping the erroneous action from the whole' and determining the sufficiency of what is left 'standing alone.'" *Id.* at 483 (quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)).

potential unreliability of victim identifications. *Id.* A panel of this court had grave doubt as to whether the errors affected the jury's verdict because, without the excluded witnesses, "the jury had no basis beyond defense counsel's word to suspect the inherent unreliability of the [victims'] identifications." *Id.* at 482.

Likewise, the central evidence of Chandler's guilt came from the testimony of the alleged victim, A.C. As a result, the jury's verdict likely hinged on the truthfulness of A.C.'s testimony. As discussed above, however, the trial court prohibited Chandler from introducing evidence that may have cast reasonable doubt on the reliability of her testimony. As a result of the trial court's rulings, the jury had almost "no basis beyond defense counsel's word to suspect the inherent unreliability" of A.C.'s allegations.[12] *Ferensic*, 501 F.3d at 482.

Weighing the evidence of A.C.'s past allegations against the limited direct evidence supporting Chandler's conviction, we have grave doubt about the verdict because we think that the excluded evidence could have introduced reasonable doubt into a juror's mind. *See O'Neal*, 933 F.3d at 625.

C. The State's Arguments

The State argues that any error was harmless because (1) the excluded testimony was largely duplicative of testimony given by the prosecution's witnesses

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[12] The only evidence the jury heard of A.C.'s potential unreliability was the fact that her testimony at trial differed from the accounts she gave investigators in two prior interviews.

and (2) there was overwhelming evidence to convict Chandler. Neither of these arguments alleviates our grave doubt about whether the trial court's errors were harmless.

1. Duplicative

The State first argues that the trial court's errors did not affect the jury's verdict because the excluded evidence was duplicative of other trial testimony. This argument fails for two reasons.

First and foremost, duplicative evidence may *strengthen* rather than weaken a petitioner's argument that he was prejudiced by a trial court's error. For example, the trial court in *O'Neal* unconstitutionally excluded testimony supporting the defendant's argument that Hickman shot the victim. 933 F.3d at 627. The Warden in *O'Neal* argued that the trial court's errors were not prejudicial because other witnesses gave similar testimony and because O'Neal had the opportunity to cross-examine Hickman. *Id.* A panel of this court disagreed, explaining that "testimony that mirrors the content of other testimony . . . can still have considerable impact by bolstering the credibility of the other testimony." *Id.* In *O'Neal*, the purportedly duplicative evidence "could have been the straw that broke the camel's back in establishing a reasonable doubt as to [the defendant's] guilt." *Id.* The panel also rejected the Warden's argument that crossexamination could cure any potential prejudice, explaining that O'Neal's ability to impeach witnesses was significantly weaker without the excluded evidence. *Id.* at 628. Because *O'Neal*'s logic applies with the same force to Chandler's case, we reject the State's assertion that

Chandler was not prejudiced simply because the excluded evidence was duplicative or because he had the opportunity to cross-examine A.C.

But even if duplicative evidence were somehow less consequential, the State's argument would fail because most of the excluded evidence was not duplicative. For example, the State argues that evidence of A.C.'s allegations would have been duplicative at trial because (1) a CPS investigator testified that she was aware that A.C. "had made prior allegations of physical abuse, not of sexual abuse," and (2) A.C. admitted on cross-examination that she had made two allegations against the Hamblins. R. 9-4, PID 333. However, Chandler was not just trying to show that A.C. made allegations in the past, but also that the allegations were *false*. Although a CPS investigator testified that she was aware that A.C. had previously made allegations of physical abuse, she did not acknowledge that the allegations were false. Similarly, although A.C. acknowledged that she made two allegations against the Hamblins, she testified that both were true. Accordingly, the jury heard no evidence that A.C. previously made false allegations.

Had the Hamblins testified, they would have identified specific false allegations that A.C. made. For example, A.C. had alleged that the Hamblins' dog had attacked her. But when A.C. made this allegation to her counselor, she had no visible bitemarks. Sandy would have testified that, when the counselor confronted A.C., she "giggled, admitted that she lied," and said, "it's fun to lie." R. 9-9, PID 437. The Hamblins would have directly contradicted A.C.'s testimony that she never falsely accused prior foster parents of

misconduct. Had Chandler obtained a copy of Judge Feeney's records in time for trial, the jury would have seen a probate court's factual findings that A.C. had made false accusations in the past and knew how to "manipulate the system." R. 9- 10, PID 578. Contrary to the State's argument, this evidence would not have been duplicative, but would have been critical to the jury's consideration of whether A.C.'s testimony was credible.

The State also argues that the testimony of Kieliszewski, Chandler's expert, would have mirrored Cottrell's, the prosecution's expert. Kieliszewski would have testified that because memories typically degrade rather than strengthen, remembering memories in greater detail over time is a "red flag." R. 9-9, PID 443. But Cottrell testified during cross-examination that memories generally "degrade" and that people, "particularly young children," could theoretically come to believe a story that was originally told as a lie. R. 9-5, PID 371. And although Kieliszewski would have discussed RAD, R. 9-9, PID 443, Cottrell answered basic questions about the condition during cross-examination. R. 9-5, PID 371.

However, notwithstanding this overlap, the experts differed in important ways. Although the prosecution's expert admitted that it is *possible* for memories to degrade, his testimony was used to advance the argument that memories can become "enriched" as a survivor of assault recounts them repeatedly. R. 9-5, PID 370. The defense expert, by contrast, would have testified that it is a "red flag" for memories to strengthen or change over time because it could indicate that "the alleged victim [has] been coached" or

that "they decided to add more to their story because there's some type of reinforcement they're getting." R. 9-10, PID 770. Kieliszewski would also have testified that this concern is particularly heightened when a victim is re-interviewed several times over the course of years, as occurred with A.C., because "confabulation" could occur with each retelling–where a person may subconsciously fill in the blanks of the memory. R. 9-9, PID 442.

Additionally, Kieliszewski planned to testify about the best practices for conducting forensic interviews with potential victims of child sexual assault, a topic Cottrell did not discuss. The protocols "highly discourage" allowing a support person at an interview because it could affect an interviewee's answers, but the investigators allowed A.C.'s adoptive mother to sit next to her for the interview. R. 9-9, PID 442. The guidelines also recommend recording forensic interviews, because an investigator's notes are frequently insufficient to describe an interview comprehensively. The investigator's report for A.C.'s final interview was just 1.5 pages long, which Kieliszewski said was "quite short" for a ninety-minute interview. *Id.* Kieliszewski would have also testified that forensic interviews should occur "early after the allegations occur" because they are considered the most reliable. *Id.* But here, A.C.'s final interview took place years after she made the allegations and differed greatly from her original account.[13]

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[13] Kieliszewski would have also explained that the guidelines require interviewers to ask questions in a neutral way and to test several different hypotheses with a child interviewee. The

As for the RAD-related testimony, the State is correct that the two experts gave overlapping accounts of the condition, which causes children to resist forming bonds with other people. But the testimony about RAD lost its value because the trial court excluded so much other relevant evidence. Chandler attempted to show that A.C. had a motive for making false accusations in the past–she wanted to be removed from each foster family and returned to her biological parents. By explaining the symptoms of RAD, combined with A.C.'s history of making false accusations, Chandler intended to show that A.C.'s accusation was motivated by a desire to avoid adoption and be removed from foster care. Had the trial court allowed the other evidence in, the RAD-related testimony would have played a more significant role.

In sum, most of the evidence that the trial court erroneously excluded was not duplicative. Combined with the fact that A.C.'s account changed with each new retelling, we have grave doubt about whether the jury would have convicted Chandler had Chandler been able to present his excluded evidence.

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purpose of the alternative-hypothesis testing is to avoid bias and to pinpoint the source of potentially unreliable memories–for example, if the allegation is based on something the child saw in a dream or a movie. In the context of child sexual abuse, an interviewer could ask the child about whether the abuse occurred in various environments or whether different people were responsible. By testing alternative hypotheses, investigators can better identify sources of potentially inaccurate memories. Here, A.C.'s interviewers may not have followed the alternate-hypothesis protocol, and Kieliszewski's testimony would have highlighted concerns about the inconsistency of A.C.'s repeated retellings.

2. Overwhelming Evidence

Finally, the State argues that there was overwhelming evidence of Chandler's guilt. Three of Chandler's other alleged victims testified: (1) Chandler's sister Norma, who alleged that he molested her nearly fifty years prior when they were both children, (2) Z.B.–Stephanie and Lou Jr.'s eight-year-old daughter–who testified that Chandler abused her once or twice each time he saw her, and (3) Harden–Stephanie's best friend–who testified that Chandler used a "quick swipe" to clean sand "just outside of . . . the genital area" when she was young. R. 9-4, PID 337. Darlene also testified that she once saw Chandler touch A.C.'s leg in a way that "didn't look right." R. 9-5, PID 379. Finally, the Chandlers' family computer contained a written story of child sexual abuse.

However, a juror could reasonably doubt the strength or relevance of this circumstantial evidence after considering the excluded evidence challenging A.C. and others' credibility. The abuse Norma alleges would have occurred when she and Chandler were children. Harden's allegation was that Chandler cleaned sand off her, potentially in an inappropriate way, but not that he touched her in the same way as A.C. As for Z.B., her parents were in the middle of a family dispute with Chandler and Darlene. Chandler contends that Lou Jr. was trying to use his parent's land to begin a marijuana-grow operation and had threatened to kill his mother. Chandler claims that, because of the prosecution, which was triggered by Z.B.'s allegations, he was forced to sell his land. Thus, Chandler argues that Lou Jr. and Stephanie had a

motive to urge their daughter to testify against him. Further, one of the witnesses the trial court excluded was Amanda Fraly, who assertedly would have testified that Lou Jr. had pressured her and others to make false allegations against Chandler. And Z.B.'s testimony, like A.C.'s, was inconsistent with the account she gave at an earlier date.

The evidence from the Chandlers' computer is alarming, but Darlene testified that pornography popped up randomly while she used the computer. Darlene also pointed out that the computer was shared with the couple's teenage sons, including one who had a history of looking at "real[ly] bad stuff." R. 9-5, PID 380.

Although the evidence the State cites could support Chandler's conviction, this is not a sufficiency-of-the-evidence case. As a result, we are "prohibit[ed]" from "focusing on the sufficiency of the evidence, especially where it entails 'stripping the erroneous action from the whole' and determining the sufficiency of what is left 'standing alone.'" *Ferensic*, 501 F.3d at 483 (quoting *Kotteakos*, 328 U.S. at 765). Instead, to determine whether the constitutional errors had a "substantial and injurious" effect on Candler's verdict, we must use a "wider lens" to "ponder[] all that happened" at trial. *Id.* (quoting *Kotteakos*, 328 U.S. at 765). The paucity of direct evidence inculpating Chandler on this record, coupled with the considerable excluded evidence casting serious doubt on A.C.'s credibility leaves us with grave doubt about whether Chandler's verdict was affected by the trial court's errors.

IV. Conclusion

We REVERSE the district court, conditionally GRANT Chandler's habeas corpus petition, and REMAND to the district court with instructions to order Chandler's release from custody unless the State of Michigan grants him a new trial within ninety days.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 23-1270

LOUIS CHANDLER,

Petitioner - Appellant,

v.

MIKE BROWN, Warden,

Respondent - Appellee.

FILED
Jan 24, 2025
KELLY L. STEPHENS,
Clerk

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

JUDGMENT

On Appeal from the United States District Court for the Western District of Michigan at Marquette.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is REVERSED, Louis Chandler's petition for a writ of habeas corpus is CONDITIONALLY GRANTED, and the case is REMANDED for further proceedings consistent with the opinion of this court.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens
Kelly L. Stephens, Clerk

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)
File Name: 25a0017p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOUIS CHANDLER,

Petitioner-Appellant,

v.

No. 23-1270

MIKE BROWN, Warden,

Respondent-Appellee.

Appeal from the United States District Court for the Western District of Michigan at Marquette. No. 2:19-cv-00263–Paul Lewis Maloney, District Judge.

Argued: April 30, 2024

Decided and Filed: January 24, 2025

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

COUNSEL

ARGUED: Matthew A. Monahan, STATE APPELLATE DEFENDER OFFICE, Detroit, Michigan, for Appellant. Jared D. Schultz, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan,

for Appellee. **ON BRIEF:** Matthew A. Monahan, STATE APPELLATE DEFENDER OFFICE, Detroit, Michigan, for Appellant. Jared D. Schultz, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee.

OPINION

HELENE N. WHITE, Circuit Judge. Petitioner-Appellant Louis Chandler, a Michigan prisoner, is serving concurrent terms of twenty-five to seventy-five years in prison for two convictions of first-degree criminal sexual conduct. Mich. Comp. Laws § 750.520b(2)(b). After exhausting his state-court appeals, Chandler filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254, claiming that the trial court infringed his right to present a complete defense. The district court denied the petition, and Chandler appeals. We REVERSE, conditionally GRANT Chandler's habeas corpus petition, and REMAND to the district court.

I. Background

A. Factual History

For twelve years, Chandler and his wife, Darlene Chandler ("Darlene"), cared for more than twenty foster children without incident. In 2010, the Chandlers

decided to foster A.C., an eight-year-old girl.[1] Because a prior Child Protective Services ("CPS") report had concluded that A.C. had a "history of false allegations," R. 9-10, PID 728, the foster-care agency warned the Chandlers to "watch" A.C. closely, R. 9-5, PID 382.

Roughly three months after the initial foster placement, the Chandlers informed A.C. that they intended to adopt her. Days later, A.C. told Darlene that Chandler had touched her inappropriately. Darlene was confused because, shortly after reporting this incident to Darlene, A.C. "laugh[ed] around the room . . . and climbed on [Chandler's] lap." R. 9-5, PID 380. Still, Darlene called the adoption agency to report A.C.'s allegations, and Chandler voluntarily left the home to give law enforcement, CPS, and the foster-care agency time to investigate.

A.C. told investigators that Chandler sexually abused her every day, and sometimes multiple times per day, both inside the home and at a local movie theater.[2] The foster-care agency concluded that it had serious doubts regarding A.C.'s assertions, which were compounded by A.C.'s history of false allegations. The prosecutor also declined to charge Chandler at the time. However, the CPS investigator assigned to the case, Jennifer Schmidt, concluded that the allegations were substantiated under a preponderance of the

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[1] The State's brief uses the initials "A.H." instead of "A.C.," perhaps because the child's last name changed after adoption. For consistency, we use "A.C."

[2] CPS also interviewed other foster children who were staying with the Chandlers at the time, but the interviews did not turn up anything of note.

evidence standard. Schmidt had not read A.C.'s file, which detailed her history of false allegations, but another foster-care worker had told Schmidt that A.C. had made allegations of physical abuse in the past. After Schmidt's investigation, CPS removed A.C. from the Chandlers' home, and a new family eventually adopted her.[3] In the following years, a dispute arose within the Chandler family. During the dispute, the Chandlers' son–Louis Chandler Jr. ("Lou Jr.")–allegedly threatened to kill his mother, and Darlene testified that she was afraid of her son.

In 2014, Lou Jr.'s eight-year-old stepdaughter, Z.B., told her mother, Stephanie Chandler ("Stephanie"), that Chandler had touched her inappropriately. Lou Jr. and Stephanie filed a police report, which triggered a second criminal investigation, and told police that they knew of two other victims: Stephanie's best friend, Josefina Harden, and Norma Chandler ("Norma"), Chandler's sister.

Police also re-interviewed A.C., who was then twelve years old. Detective Svoboda, who authored a report following the interview, testified that A.C.'s account was inconsistent with the one she gave previously. In 2010, A.C. alleged that Chandler abused her every day, both at home and at the movie theater. But in her 2014 interview, A.C. told the detective that

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[3] CPS also filed a petition requesting jurisdiction of Austin, the Chandlers' adopted son. **R. 9-4, PID 331**. Although no record document discloses whether the petition was successful, Austin still lived with the Chandlers at the time of trial.

Chandler abused her four times total, including once after a church party, but never at a movie theater.

Police then obtained a search warrant for Chandler's computer, which yielded written stories of a sexual nature, including one containing child sexual abuse. Several other individuals used the computer in addition to Chandler, however, and Darlene testified that she once caught her adopted teenage son looking at "real[ly] bad" pornography on the computer. R. 9-5, PID 380. Darlene also testified that pornography would pop up randomly on its own when she used the computer. In 2015, the Kent County prosecutor charged Chandler with four counts of firstdegree criminal sexual conduct stemming from the alleged sexual abuse of A.C., but he dismissed two of the charges before trial.

B. Chandler's Motions

The case had an "accelerated" timeline. *People v. Chandler*, No. 329605, 2017 WL 6502801, at *2 (Mich. Ct. App. Dec. 19, 2017). On April 10, 2015, the court appointed Jonathan Schildgen as Chandler's public defender. Chandler entered a not-guilty plea on April 22, and discovery began a day later. Schildgen received the first batch of discovery documents in mid-May. On May 26, the court set the case for trial on July 6–just seventy-five days after Chandler entered his not-guilty plea.

As Schildgen went through the initial document disclosure, he found the CPS report concluding that A.C. had a "history of making false allegations" against foster parents. R. 9-3, PID 256. Based on this

new information, Chandler successfully requested funds on June 11 to hire an expert on child-sexual-abuse allegations.

On June 16, Chandler moved to compel additional discovery, seeking "all Kent County DHS and CPS reports for [A.C.] containing and regarding references to prior false and prior unsubstantiated sexual abuse allegations." R. 9-10, PID 519. The court held a hearing on June 26 and denied the motion, concluding that Chandler was only entitled to records related to A.C.'s allegations against him and that the prosecution did not need to disclose any evidence of A.C.'s allegations against others.[4]

At the same hearing, Schildgen also requested an adjournment of the trial date, explaining that he still needed to obtain additional evidence and that his expert needed time to review the records. The court denied the request. On June 29, Chandler moved for reconsideration, arguing that the expedited timeline deprived him of the right to present a defense and made it impossible for Schildgen to represent him effectively. The court denied the request.

On the morning of the July 6 trial, Chandler again moved for an adjournment. Schildgen told the court that he had received additional discovery from the foster-care agency just a week earlier, including a report raising "serious doubts" as to whether sexual abuse occurred. *Id.* at 521. The new documents included the

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[4] The court told Schildgen to "go out and talk to [the CPS workers], you can sit down and meet with them. . . . [T]hat burden is on your shoulders." R. 9-10, PID 520.

names of other foster parents who A.C. had falsely accused of misconduct. Schildgen argued that, because he received the records only a week earlier, he needed additional time to go through them, to provide them to the expert, and to prepare for trial.

Schildgen also found a probate case involving A.C., in which Judge Kathleen Feeney issued an order with factual findings useful to Chandler. Judge Feeney's order concluded that A.C. had issues with lying and making false allegations, motivated in large part by her desire to be removed from foster care and returned to her birth parents. Schildgen told the trial court that Judge Feeney had agreed to make the records available for Chandler's proceedings, but she could only do so after returning from a two-week vacation. Schildgen thus explained that delaying trial would give him time to pick up Judge Feeney's records, go through them, and make them available to the expert.

The trial court rejected Chandler's arguments, concluding that any evidence of A.C.'s prior allegations was inadmissible because it was "extrinsic." R. 9-3, PID 258. Chandler could only raise the topic through cross-examination of A.C., but he would be "stuck with her answers." *Id*. The court also barred Chandler's expert from testifying at trial because Chandler had not complied with the court rule requiring disclosure of an expert's name "no later than 28 days before trial."[5] *See*

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[5] The court authorized funding for the expert twenty-five days before trial, so it was impossible for Chandler to comply with the rule. Still, Chandler failed to disclose the expert's name until the day of trial, which he argued was because the expert had insufficient time to review the relevant evidence and create a report.

Mich. Ct. R. 6.201(A)(1). Finally, the trial court found no legitimate reason to postpone trial and denied Chandler's motion.

The trial court also barred Chandler's remaining proposed witnesses from testifying– more than twenty of them–because their names were not disclosed at least ten days before trial. Chandler argued that, because he was still receiving discovery until the day of trial, it would have been impossible to comply with this rule. Among those that Chandler told the trial court he intended to call to testify were: (1) three of A.C.'s previous foster families–the Hamblins, Nickersons, and Lamberts–who would have testified regarding A.C.'s character and her history of false allegations, including that a foster parent heard A.C. tell her therapist that "it's fun to lie." (2) Amanda Fraly, who would have testified that Lou Jr. pressured her to make a false allegation against Chandler before he contacted police; and (3) five foster-care-agency employees, who would have testified about A.C.'s false allegations and Chandler's twelve years as a "model caregiver." R. 9-5, PID 348. Chandler again tried to call witnesses on the second day of trial, arguing that he was denied his "constitutional right to present a defense," R. 9-4, PID 340, but the court refused to permit any witnesses not already "endorsed by the prosecution," *id.* at 339. In sum, the court's orders limited Chandler's time to prepare for trial, stymied his discovery, and prevented him from calling any witnesses.

C. Trial Testimony

A.C. testified at Chandler's trial and provided inconsistent testimony. At first, A.C. testified that (1)

she was unable to recognize Chandler or Darlene, (2) she did not remember making any allegations against Chandler, (3) she did not remember any CPS investigation, (4) she did not remember any foster placement before her current home, and (5) she did not remember any time when she was touched inappropriately. Moments later, A.C.'s testimony changed. She testified that Chandler sexually abused her twice–both times in the Chandlers' home. A.C.'s testimony contradicted her 2010 allegations that Chandler abused her daily, both at home and elsewhere, and the account she gave Svoboda four months earlier that Chandler abused her four times, including once after a church party.

When asked about the inconsistent accounts on cross-examination, A.C. denied alleging in 2010 that Chandler's abuse happened daily, both inside and outside the home, and did not remember making the inconsistent statements to Svoboda months earlier. A.C. also reiterated that Chandler's abuse occurred twice in total. Schildgen attempted to challenge A.C.'s honesty by questioning her about her history of stealing from retail establishments, but the court cut off this line of questioning.

Finally, Schildgen asked A.C. about a lengthy list of allegations that she had purportedly made in the past. Schildgen learned of these prior allegations after obtaining CPS and fostercare- agency records in the days before trial. The records included allegations that (1) a foster family's dog had attacked her, (2) a foster parent abused her by swinging her around by her ponytail, (3) a foster parent refused to give her clothing, shoes, or bedding, (4) a foster parent hit her with a wooden spoon, (5) a cousin abused her, (6) a daycare

provider had hit her, (7) a foster parent sexually abused her, (8) a foster parent made her eat soap, and (9) a foster-care worker raped her. R. 9-4, PID 321–24; R. 9-7, PID 413; R. 9-10, PID 619. In her testimony, A.C. admitted to making only two of these allegations, but she testified that both were true.[6] For the others, A.C. either denied or did not remember making the allegations. Because the court had barred the defense from calling witnesses and citing the CPS records directly, there was no evidence at trial to contradict A.C.'s claim that she never made false allegations.

The prosecution then called three other witnesses who testified that Chandler had touched them inappropriately in the past.

Z.B. first testified that, over the span of two years, Chandler sexually abused her once or twice on each day they spent together. However, in a prior proceeding, Z.B. had given contradictory testimony. On cross-examination, Z.B. testified that she did not remember making the inconsistent statements.[7]

Then, Norma testified that Chandler had molested her nearly fifty years earlier when they were both children. R. 9-5, PID 350. At the time of the alleged abuse, Norma was eight to ten years old and Chandler was "eleven or twelve." R. 9-5, PID 351.

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[6] Of these, the only substantiated allegation was that a foster parent put a dab of soap in A.C.'s mouth after A.C. called the foster parent "a fucking bitch." R. 9-10, PID 812.

[7] Evidence that Chandler passed a polygraph test concerning Z.B.'s allegations was disallowed.

Finally, Josefina Harden, Stephanie's "best friend," described an incident that occurred roughly seventeen years earlier. R. 9-4, PID 338. Harden testified that when she was about ten years old, she went to the Chandlers' home for dinner. Because Harden had just been playing in a sprinkler, she was wearing a bathing suit and had sand all over her body. Chandler took Harden to the bathroom to clean the sand off her body and allegedly used his hands to brush off the sand between her legs, including a "quick swipe" to clean the sand "just outside of . . . the genital area." *Id.* at 337.

The prosecution also called Thomas Cottrell for expert testimony. Cottrell was a professor at Western Michigan University and the executive of a company providing counseling to survivors of sexual assault. Cottrell testified that children often wait to disclose sexual abuse, and roughly half of survivors wait until adulthood. He explained that late disclosures generally occur for one of three reasons: the victim (1) realizes in adulthood that abuse occurred, (2) disassociates from the memory due to trauma, or (3) believes that the costs of disclosure outweigh the benefits. Although victims' memories may degrade over time, Cottrell testified that memories can "become enriched" as an individual discusses them repeatedly. *Id.* at 370. Cottrell also testified that, because children have difficulty with chronology, they can "confound multiple occurrences of abuse," making it difficult to distinguish them. *Id.*

On cross-examination, Schildgen asked about false allegations of sexual abuse, and Cottrell testified that young children could come to believe lies by

repeating them. Schildgen also asked about Reactive Attachment Disorder ("RAD"), a condition that occurs in children who have been deprived of a relationship with their parents at a young age. Cottrell explained that children diagnosed with RAD resist relationships, have difficulty trusting others, and are not "tuned into the consequences of their choices." *Id.* at 372. Schildgen asked about an incident where A.C. allegedly told a therapist that she enjoyed lying, which Cottrell said was "not atypical of [a RAD] diagnosis." *Id.*

The jury convicted Chandler on two counts of first-degree criminal sexual assault, and the trial court sentenced him to concurrent sentences of twenty-five to seventy-five years in prison. During sentencing, the judge said that he was "absolutely convinced that [Chandler is] a pedophile" and that he did not "ever want [Chandler] out of prison." R. 9-7, PID 420.

D. Remand

Chandler appealed, arguing that the trial court denied him his right to present a complete defense and incorrectly applied the state's evidentiary and procedural rules. The Michigan Court of Appeals remanded the case for an evidentiary hearing, which was held on August 24, 2017.

At the hearing, Schildgen testified that he had intended to call A.C.'s former foster parents and caseworkers to discuss specific instances of A.C.'s false allegations. Schildgen had also planned to call an expert witness to testify about Reactive Attachment Disorder, proper interviewing techniques, and false accusations of sexual assault. Schildgen argued that, because

he was unable to call any witnesses, the jury had only A.C.'s answers without any consideration of evidence impeaching her credibility.

Sandy and Randy Hamblin, the foster parents who cared for A.C. before the Chandlers, also testified. Sandy testified that although A.C. had difficulty attaching to her, she was comfortable with the men in her family. A.C. "wanted to sit on their lap[s] all the time," but Sandy discouraged this behavior because she had heard about A.C.'s prior allegations. R. 9-10, PID 763. Sandy also detailed several allegations that A.C. made against the Hamblins, which were later determined by CPS to be "unfounded." *Id.* at 764. As with Chandler, A.C. made allegations against the Hamblins days after she learned that they intended to adopt her. Randy corroborated Sandy's testimony and, when asked his opinion of A.C.'s character, testified that she "could not tell the truth." *Id.* at 766.

Jeff Kieliszewski, Chandler's expert witness, then testified about "confabulation," a type of memory error where an individual produces fabricated, distorted, or misrepresented memories. *Id.* at 768. He explained how a child in A.C.'s position could come to believe things that were not true, particularly after repeating the story many times, *id.,* and that, because memory degrades over time, it was a "red flag" that A.C. added additional details to her story years after it allegedly occurred. *Id.* at 770. Kieliszewski also discussed the ways in which the investigators failed to follow standard interviewing procedures with A.C. For example, because a parent may influence a child's answers or pressure them to say something untrue, the guidelines for child forensic interviews "highly discourage" the

presence of a support person. *Id.* at 769. But A.C.'s adoptive mother was allowed to sit next to her for the interview, which the defense would have argued made the answers unreliable. *Id.* The guidelines also recommend recording interviews as a "best practice," but the detectives did not do so with A.C. *Id.* Instead, the detectives wrote a one-and-a-half-page report, which the expert said was "quite short" for a ninety-minute interview. *Id.* After reviewing A.C.'s record and the investigators' interviewing techniques, Kieliszewski concluded that there was a "substantial possibility of a false allegation report of sexual abuse." *Id.* at 774.

After the testimony concluded, the prosecution argued that a new trial was unnecessary because (a) the documents Schildgen received on the eve of trial had no new information compared to the documents he received earlier, (b) Chandler successfully made his core arguments by cross-examining the government's witnesses, and (c) the evidence and testimony that Chandler sought to present at trial was inadmissible.

The trial court agreed with the prosecution and rejected Chandler's request for a new trial, concluding that all the evidence Schildgen had sought to introduce was inadmissible, except for the expert's testimony regarding proper interviewing procedures. It also determined that, to the extent any testimony was wrongly excluded, the error did not prejudice Chandler because the "evidence was clearly overwhelming." *Id.* at 779.

E. Appeal

Chandler's case returned to the Michigan Court of Appeals, where he again argued that the trial court

had violated the state's trial rules and denied him the right to present a complete defense. In a brief footnote, the court rejected Chandler's constitutional claim, concluding that Chandler had a meaningful opportunity to present a complete defense because (1) he was represented by counsel at trial and (2) his counsel could argue through cross-examination that A.C. fabricated the allegations. *Chandler*, 2017 WL 6502801, at *4 n.3.

However, the court of appeals found Chandler's evidentiary and procedural claims meritorious. It first concluded that the trial court abused its discretion by denying Chandler's repeated requests for an adjournment without any "reasonable or principled basis." *Id.* at *3. The trial court further abused its discretion by barring all of Chandler's lay and expert witnesses from testifying because it was a disproportionally "extreme sanction" for a minor procedural violation. *Id.* Finally, because the trial court "employed the wrong framework when considering the admissibility of extrinsic evidence," it abused its discretion by excluding evidence of A.C.'s prior false allegations. *Id.* at *4. Instead, the trial court should have considered admitting the evidence under Michigan Rule of Evidence 404(b), *id.*, which allows admitting extrinsic evidence "for a[] purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident," Mich. R. Evid. 404(b). Thus, the jury should have heard evidence of A.C.'s prior false allegations.

Despite the trial court's multiple abuses of discretion, the court of appeals affirmed Chandler's conviction under the state's forgiving test for non-

constitutional errors, which allows a court to overturn a conviction only if "it affirmatively appears that it is more probable than not that the error was outcome determinative." *Chandler*, 2017 WL 6502801, at *4 (quoting *People v. King*, 824 N.W.2d 258, 262 (Mich. Ct. App. 2012)). The court concluded that reversal was unwarranted because (1) Chandler challenged A.C.'s credibility during cross-examination by asking her about her prior inconsistent statements, (2) Chandler's expert would have discussed the same topics as the prosecution's expert, and (3) the testimony of Chandler's other instances of alleged sexual misconduct "bolstered the victim's credibility and supported a propensity inference." *Id.* at *5.

F. District Court

On December 30, 2019, Chandler filed this petition for habeas corpus in federal district court, arguing that he was denied several due process rights–including the right to present a complete defense, to call witnesses on his own behalf, and to a fair trial. On February 3, 2023, the magistrate issued a report and recommendation to deny Chandler's petition. Chandler objected to the report and recommendation, but the district court overruled the objections and adopted the recommendation. Although the district court concluded that Chandler could not establish that the state court unreasonably applied clearly established law, it granted a certificate of appealability because a reasonable jurist could disagree. R. 15, PID 1021-22.

Chandler appeals.

II. Constitutional Claim

A. Standard of Review

"AEDPA requires habeas petitioners to exhaust their claims in state court before turning to a federal court for relief." *Stermer v. Warren*, 959 F.3d 704, 720 (6th Cir. 2020). A state court's resolution of a claim on the merits receives deference in federal habeas proceedings. *Id.* Accordingly, a federal court may grant relief to a petitioner only when a state court's decision is "(1) . . . contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) . . . based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* at 720-21 (alterations in original) (quoting 28 U.S.C. § 2254(d)). "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)).

An "*unreasonable* application of federal law is different from an *incorrect* application of federal law." *Williams v. Taylor*, 529 U.S. 362, 410 (2000). A federal court may grant the writ under the "contrary to" clause "if the state court arrives at a conclusion opposite to that reached by th[e] Court on a question of law or if the state court decides a case differently than th[e] Court has on a set of materially indistinguishable facts." *Id.* at 412-13. Under the "unreasonable application" clause, a federal court may grant the writ "if the state court identifies the correct governing legal

principle from th[e] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413. In determining whether the state court applied a rule unreasonably, a federal court must consider the rule's specificity. *Yarborough*, 541 U.S. at 664. "The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Id.*

"In a habeas appeal, we review questions of law de novo, including the ultimate decision to grant or deny the petition." *Stermer*, 959 F.3d at 720. Absent an evidentiary hearing, the district court's factual findings are also reviewed de novo. *Id.* We take care to consider the "entire record" in the case, including both the trial and remand hearing transcripts. *Mays v. Hines*, 592 U.S. 385, 392 (2021); *see also Adams v. Holland*, 330 F.3d 398, 406 (6th Cir. 2003) (holding that federal courts must consider habeas petitions "in light of the full record").

B. Right to Present a Complete Defense

The Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984). This right is rooted in several constitutional provisions, including the Fourteenth Amendment's Due Process Clause and the Sixth Amendment's various trial rights. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986); *see also Strickland v. Washington*, 466 U.S. 668, 684-85 ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment."); *In*

re Oliver, 333 U.S. 257, 273 (1948) ("A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense–a right to his day in court–are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.").

1. Key Precedents

Because Chandler must show that the state court contradicted or unreasonably applied clearly established federal law as established by the Supreme Court, we begin by surveying the key precedents concerning the right to present a complete defense. We survey both Supreme Court cases defining the right to present a complete defense and our own cases applying this clearly established federal law under the AEDPA standard.

Washington v. Texas, 388 U.S. 14 (1967)

Jackie Washington was charged with murder. *Id.* at 15. The only eyewitness was Charles Fuller, an alleged accomplice who had already been tried and convicted for the same crime. *Id.* at 16. Although Fuller shot the victim, not Washington, he was barred from testifying due to a Texas evidentiary rule that prohibited accomplices from testifying on behalf of the defense. *Id.* at 16-17. The Supreme Court explained that Texas's rule "arbitrarily denied [Washington] the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense." *Id.* at 23. Because criminal defendants have the right to present

their own "version of the facts," including the "right to present [their] own witnesses to establish a defense," the Court held that Texas's rule unconstitutionally denied Washington a fair trial. *Id.* at 19.

Chambers v. Mississippi, 410 U.S. 284 (1973)

Leon Chambers was charged with murder, but no physical evidence tied him to the crime. *Id.* at 287, 289. Another man, Gable McDonald, confessed to the murder on four occasions and was arrested, but he later repudiated the confession. *Id.* at 287-88. At trial, Chambers tried to show that it was McDonald who had committed the murder. *Id.* at 289. One witness testified that he saw McDonald shoot the victim, and another witness testified that he saw McDonald immediately after the shooting with a gun in his hand. *Id.* A third witness testified that he was with Chambers during the shooting and did not see him holding a firearm. *Id.* Chambers called McDonald to testify, but he again repudiated his confession. *Id.* at 291. Due to a state rule of evidence, the trial court prevented Chambers from treating McDonald as an adverse witness and from impeaching his testimony. *Id.* Chambers was also prohibited from calling other witnesses to testify that they heard McDonald's confession. *Id.* at 292.

The Court overturned Chambers's conviction, explaining that by excluding evidence "critical to Chambers' defense," the trial court "denied him a trial in accord with traditional and fundamental standards of due process." *Id.* at 302. ("Few rights are more fundamental than that of an accused to present witnesses in his own defense."). Notably, Chambers had competent counsel and called several strong eyewitnesses to

support his alternate-suspect theory–including one who saw McDonald shoot the victim and another who saw him holding a gun–but the Court *still* held that Chambers was entitled to a new trial because he was denied the opportunity to present a complete defense.

Ungar v. Sarafite, 376 U.S. 575 (1964)

Sidney Ungar was charged with criminal contempt after giving witness testimony, and the court scheduled his contempt hearing roughly three weeks later. *Id.* at 580-81. On the day of the hearing, Ungar requested a continuance because he had hired a new lawyer five days earlier who was unfamiliar with the facts of the case. *Id.* at 590. The trial court rejected Ungar's request. *Id.* On appeal, the Supreme Court held that the denial of a continuance did not violate due process because the facts of the case were very simple–implicating only a single sentence of Ungar's testimony. *Id.* However, the court explained that, in a more complicated case, "a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality." *Id.* at 589.[8] Accordingly, a court may

[8] *Chandler v. Fretag* is one such case where the denial of a continuance violated due process. 348 U.S. 3 (1954). There, a defendant originally waived his right to counsel, but then changed his mind once he learned he would be charged as a habitual offender. *Id.* at 4-5. The defendant requested a continuance so that he would have time to find new counsel, but the trial court denied the request. *Id.* The Court held that the denial violated due process. *Id.* at 10 ("A necessary corollary [of the right to counsel] is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth.").

not arbitrarily deny a defendant's request to delay trial when it impedes the right to a fair trial.

O'Neal v. Balcarcel, 933 F.3d 618 (6th Cir. 2019)

Tyson O'Neal was charged with second-degree murder. *Id.* at 620. At trial, O'Neal attempted to argue that another man, Parish Hickman, shot the victim. *Id.* However, the trial court excluded two statements supporting defendant's theory: (1) a jailhouse confession that Hickman made to another inmate and (2) the victim's dying declaration to a police officer identifying Hickman as the shooter. *Id.* at 622. The trial court excluded both statements–the first because it was not timely disclosed to the prosecution and the second because it was hearsay. *Id.* Because the excluded evidence was critical to O'Neal's defense, a panel of this court granted habeas relief on the grounds that the trial court acted contrary to the Supreme Court's precedent in *Chambers* and this violation was not harmless under the "grave doubt" standard set forth in *Brecht v. Abrahamson*, 507 U.S. 619 (1993). *Id.* at 628.

Ferensic v. Birkett, 501 F.3d 469 (6th Cir. 2007)

Robert Ferensic was tried on charges related to armed robbery and home invasion. *Id.* at 470. The entirety of the direct evidence against Ferensic consisted of two eyewitness identifications made by the victimized couple. *Id.* Ferensic intended to call two witnesses in his defense, but the trial court barred them from testifying. *Id.* at 471. The first would have testified that he saw the two culprits right before the crime and that Ferensic did not resemble either one. *Id.* The second witness, an expert on eyewitness identifications, would have testified about the potential unreliability

of victim identifications. *Id.* at 471-72. Because the eyewitnesses' identifications were the strongest evidence against Ferensic, the panel concluded that the most important issue at trial was whether the identifications were accurate. *Id.* at 475- 80. But the trial court's exclusions significantly undermined Ferensic's ability to cast doubt on the identifications. *Id.* Relying on *Chambers*, *Washington*, and other relevant Supreme Court precedents, the panel concluded that the state court acted contrary to clearly established federal law in denying Ferensic a meaningful opportunity to present a complete defense. *Id.*

2. Chandler's Defense

Other than A.C.'s testimony, there was no direct evidence supporting the charges against Chandler. Accordingly, the decisive issue at trial was the reliability of A.C.'s testimony, and Chandler's defense hinged on challenging her credibility. Chandler attempted to present a complete defense. Before trial, Chandler repeatedly requested an adjournment–both to obtain crucial documents, like Judge Feeney's order discussing A.C.'s credibility, and to give his counsel sufficient time to read through last-minute discovery. Chandler intended to call more than twenty witnesses at trial–including A.C.'s previous foster parents and foster-care workers–who would have discussed A.C.'s history of false allegations. The defense also secured an expert, who would have testified about false allegations of child sexual abuse and explained how the investigators' interviewing methods may have been faulty. However, the trial court hampered Chandler's efforts on all fronts, preventing him from challenging A.C.'s

credibility in any meaningful way. When A.C. denied ever having made false allegation on cross-examination, the trial court told Chandler he was "stuck" with her answers and could not challenge them with contradicting evidence. R. 9-3, PID 258. Chandler repeatedly asked the trial court to reconsider the exclusion of his witnesses, but the court refused to permit any witnesses not "endorsed by the prosecution," R. 9-4, PID 339.

States have "broad latitude under the Constitution to establish rules excluding evidence from criminal trials," *United States v. Scheffer*, 523 U.S. 303, 308 (1998), but the state appellate court here concluded that the trial court violated the state's rules by improperly excluding evidence, barring witness testimony, and refusing to delay the trial, *Chandler*, 2017 WL 6502801, at *3-4. Accordingly, we begin with the premise that the trial court's rulings were not justified by any of the state's evidentiary or procedural rules.

The State argues that we should afford no deference to a state court's "pro-petitioner" resolution of an issue, citing *Daniels v. Lafler*, 501 F.3d 735, 740 (6th Cir. 2007). The State misreads *Daniels*, a case in which the state court considered the defendant's constitutional challenge *hypothetically*. *Id.* at 739-40. The state court did not decide the constitutional issue on the merits, nor did it make any evidentiary rulings that were decisive in the case. *Id.* A panel of this court reviewed the constitutional issue de novo because AEDPA deference "applies only to claims 'adjudicated on the merits in State court proceedings,' and the standard of review it mandates depends on an assessment of *an actual decision* made by the state court."

Id. at 740 (quoting *Eddleman v. McKee*, 471 F.3d 576, 583 n.3 (6th Cir. 2006)). By contrast, the state court's holdings in Chandler's case were not hypothetical–they were adjudications on the merits. Accordingly, we accept the state court's holdings that the trial court repeatedly abused its discretion by violating the state's evidentiary and procedural rules.

But even if the trial court's actions were sanctioned by state rules, at least some of its rulings would not have withstood constitutional scrutiny. A trial court "abridge[s] an accused's right to present a defense" when its exclusion of evidence is "'arbitrary' or 'disproportionate to the purposes . . . serve[d].'" *Scheffer*, 523 U.S. at 308 (quoting *Rock v. Arkansas*, 483 U.S. 44, 56 (1987)). Exclusion of evidence is "unconstitutionally arbitrary or disproportionate only where it has infringed upon a weighty interest of the accused." *Id.* Accordingly, reviewing courts are required to apply a proportionality test, carefully balancing the state's interests in exclusion against the "weighty interests" of the defendant. *Ferensic*, 501 F.3d at 476-77 (quoting *Scheffer*, 523 U.S. at 308). However, excluding evidence is an excessive penalty in most cases where there is a discovery violation. *See Michigan v. Lucas*, 500 U.S. 145, 152 (1991) (holding that, "in most cases," exclusion would be unnecessary because "alternative sanctions would be 'adequate and appropriate'" (quoting *Taylor v. Illinois*, 484 U.S. 400, 413 (1988)). Accordingly, excluding evidence in response to a discovery violation is appropriate "only [in] egregious violations involving, for example, 'willful misconduct' on the part of the defendant or his counsel.'" *Ferensic*, 501 F.3d at 476 (quoting *Lucas*, 500

U.S. at 152). In order words, "the exclusion of a defendant's evidence should be reserved for only those circumstances where 'a less severe penalty would perpetuate rather than limit the prejudice to the State and the harm to the adversary process.'" *Id.* (quoting *Lucas*, 500 U.S. at 152).

Here, much of Chandler's evidence was purportedly excluded due to violations of discovery rules–for failing to disclose the names of witnesses ahead of trial. These late disclosures were not the result of willful misconduct or other bad-faith reasons; they occurred because Chandler continued to receive discovery until right before his trial. Thus, the trial court's sanctions were likely inappropriate and disproportionate under the Supreme Court's case law because of the weighty interests Chandler had at stake.

Although the state court of appeals chastised the trial court for its procedural and evidentiary errors, it rejected Chandler's constitutional claim on two bases.

First, the court concluded that Chandler had a fair trial because he was represented by counsel. *Chandler*, 2017 WL 6502801, at *4 n.3. To be sure, denying Chandler counsel would have been unconstitutional, but the mere presence of counsel does not necessarily make a trial constitutionally adequate. Indeed, each of the defendants in *Chambers*, *Washington*, and *Ferensic* had counsel at trial–but the mere presence of competent counsel was insufficient to render their trials fair. Thus, as this court has recognized, the Supreme Court's case law clearly establishes that Chandler's claim may not be defeated on the basis that he was represented by counsel at trial.

Second, the state court determined that Chandler had a fair trial because defense counsel "presented defendant's argument that the victim fabricated the allegations against defendant." *Id.* It is true that defense counsel tried to present Chandler's side of the story through crossexamination– by suggesting that A.C. had a history of false allegations and had a motive to accuse Chandler of abuse. But at every step, the trial court prevented Chandler from producing any evidentiary support for his position, making his defense appear unsubstantiated and perhaps even manufactured. And from the outset, the trial court clearly indicated that that it believed Chandler's defense to be baseless, telling him: "You're trying to base a defense here on the fact that, well, she's lied about all these other things, so that's my defense for the jury. She's lying about this. You can argue that if there's a basis to argue that, but there isn't at this point." R. 9- 3, PID 258.

Chambers, *Washington*, and *O'Neal* make clear, however, that simply allowing a defendant to raise a defense–even with some evidentiary support–is not always sufficient to ensure a fair trial. In *Chambers,* for example, eyewitnesses confirmed the defendant's alibi and testified that McDonald was the shooter. 410 U.S. at 288-89. In *Washington*, the defendant testified on his own behalf that the accomplice was the actual shooter–testimony that was strengthened by the fact that the accomplice was already convicted of the murder. 388 U.S. at 16. And in *O'Neal*, where a panel of this court relied on *Chambers* to grant habeas relief, the defense successfully called several crucial witnesses–one to confirm the defendant's alibi, a second

who witnessed Hickman shoot the victim, and a third who heard the victim's dying declaration identifying Hickman as the shooter. 933 F.3d at 621-22. Still, in each case, the defendant was denied his right to present a complete defense because the trial court excluded "critical evidence" implicating "constitutional rights directly affecting the ascertainment of guilt." *Chambers*, 410 U.S. at 302.

Chandler's right to present a complete defense was clearly circumscribed even more severely than in *Chambers*, *Washington*, and *O'Neal*. Unlike in those cases, the trial court barred Chandler from calling *any* witnesses or introducing *any* evidence on the most critical element of his defense–whether A.C.'s testimony was credible given her history of false allegations. Thus, the state appellate court unreasonably applied the Supreme Court's governing principles to Chandler's case and improperly denied his constitutional claim.[9] *See Williams*, 529 U.S. at 413.

The State's arguments to the contrary are unpersuasive.

a. Prior Precedent

The State first argues that *Chambers* and *Washington* do not govern Chandler's case because they are distinguishable. In *Chambers* and *Washington*, the court wrongly excluded evidence showing that another person had committed the charged crime. By contrast,

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[9] Because Chandler's rights were violated by the trial court's exclusion of Chandler's witnesses and evidence, we do not decide whether its refusal to delay trial also constituted a constitutional violation.

the evidence in Chandler's case concerned the credibility of the accuser, and there is no precise Supreme Court precedent holding that "the right to present a defense is violated if witnesses are precluded from testifying about an accuser's past conduct consistent with a common plan or scheme." Appellee's Brief at 34. But, as Chandler correctly points out, the State's argument is better suited to a qualified-immunity analysis, where the "contours of the right must be sufficiently clear" to put state actors on notice. *Baynes v. Cleland*, 799 F.3d 600, 610 (6th Cir. 2015).

By contrast, AEDPA does *not* require an "identical factual pattern before a legal rule must be applied." *White v. Woodall*, 572 U.S. 415, 427 (2014) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007)). To the contrary, AEDPA assumes that "[c]ertain principles are fundamental enough" to apply to "new factual permutations."[10] *Yarborough*, 541 U.S. at 666; *see also Woodall*, 572 U.S. at 427 ("[S]tate courts must reasonably apply the rules 'squarely established' by this Court's holdings to the facts of each case." (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009))). Thus, the State may not defeat Chandler's constitutional claim simply because it is premised on new facts. Rather, the State must show that the fundamental principles of the right to present a complete defense that the Supreme Court applied in *Chambers* and *Washington* apply differently (or not at all) to

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10 In *Ferensic*, for example, the panel granted habeas relief even though the trial court did not exclude evidence of a confession, like in *Chambers* and *Washington*, but rather evidence undermining the veracity of the victims' identifications. *Ferensic*, 501 F.3d at 475-80.

Chandler's case. As we explained above, however, the State is unable to make this showing because the fundamental principle established in *Chambers*, *Washington*, and their progeny–that a defendant has the right to present a complete defense–applies with force in Chandler's case.

b. Duplicative Evidence

The State next argues that Chandler had a fair opportunity to present a defense because the trial court excluded only duplicative or marginal evidence.[11] For support, the State cites *United States v. Scheffer,* 523 U.S. 303 (1998), a case that clarified *Chambers*'s holding that a constitutional violation occurs when a trial court "significantly undermine[s] the fundamental elements of the defendant's defense." *Id.* at 315. In *Scheffer*, the court-martialed defendant was prohibited from admitting polygraph evidence to bolster his own credibility, but he was allowed to introduce other factual evidence. *Id.* at 306, 317. The Court concluded that because the "court members heard all the relevant details of the charged offense from the perspective of the accused," the exclusion of the polygraph did not "implicate any significant interest of the accused." *Id.* at 316-17. The State argues that, like in *Scheffer*, the jury had the opportunity to hear Chandler's side of the story.

However, *Scheffer* differs from this case in important ways. Crucially, the *Scheffer* court excluded

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11 Below, we discuss in detail why the evidence excluded in Chandler's trial was neither duplicative nor marginal. *See infra*, Part III(C)(1). That analysis is equally applicable here.

only a single piece of evidence, and it had a good reason to do so: polygraph evidence is of questionable reliability. *Id.* at 306-07, 312 ("Although the degree of reliability of polygraph evidence may depend upon a variety of identifiable factors, there is simply no way to know in a particular case whether a polygraph examiner's conclusion is accurate, because certain doubts and uncertainties plague even the best polygraph exams."). Aside from a single piece of potentially unreliable evidence, Scheffer still presented the rest of his defense. *Id.* at 317. By contrast, the trial court here rushed Chandler to trial, prohibited him from calling any witnesses, and curtailed his ability to acquire and present key evidence. And unlike the polygraph ban in *Scheffer*, there was no sound rationale to justify the trial court's actions. *See Chandler*, 2017 WL 6502801, at *3-4. Thus, the trial court hindered Chandler's defense far more significantly than in *Scheffer*.

The question at this stage is not whether Chandler was able to make some of his arguments, but whether the trial court "significantly undermined [the] fundamental elements of [his] defense." *Scheffer*, 523 U.S. at 315. Here, there was no physical evidence to support the allegations against Chandler, so A.C.'s testimony was indispensable to his conviction. The trial court, however, "significantly undermined" Chandler's ability to present evidence casting doubt on her credibility. *Id.* Chandler's constitutional claim cannot be defeated simply because the prosecution's witnesses may have made a few helpful admissions during cross-examination, all of which Chandler was barred from supporting with evidence of his own. Ultimately, the trial

court allowed the prosecution to present its side of the story but prevented Chandler from doing the same.

III. Eligibility for Relief

A. Standard of Review

In this circuit we "always" apply *Brecht*'s "actual prejudice" test in habeas proceedings to assess whether constitutional errors are prejudicial. *O'Neal*, 933 F.3d at 625. Additionally, we apply the AEDPA standard to a state court's "harmless beyond a reasonable doubt" assessment of constitutional errors pursuant to *Chapman v. California*, 386 U.S. 18, 24 (1967). *See Brown v. Davenport*, 596 U.S. 118, 127 (2022). But we can do so only when the state court actually conducted a *Chapman* analysis. Here, because the state court concluded that no constitutional error occurred in the first place, it never applied *Chapman* to Chandler's case. *See Chandler*, 2017 WL 6502801, at *4 n.3. Instead, the state court assessed the trial court's errors under the state's more forgiving test for *non-constitutional* errors. *Chandler*, 2017 WL 6502801, at *4. Under that test, the state court could overturn Chandler's conviction only if "it affirmatively appear[ed] that it [was] more probable than not that the error was outcome determinative." *Id.* (quoting *King*, 824 N.W.2d at 262). Because we are conducting habeas review of a state-court decision that lacked any analysis under *Chapman*, we analyze Chandler's eligibility for relief under the *Brecht* test alone. *See Davenport*, 596 U.S. at 138.

Under *Brecht*, Chandler is entitled to relief if we have "grave doubt[,] not absolute certainty,"

Davenport, 596 U.S. at 135, "about whether a trial error of federal law had substantial and injurious effect or influence in determining the jury's verdict," *Davis v. Ayala*, 576 U.S. 257, 267-68 (2015) (quoting *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995)), *see also McAninch*, 513 U.S. at 436 ("When a federal judge in a habeas proceeding is in grave doubt about whether a trial error of federal law had 'substantial and injurious effect or influence in determining the jury's verdict,' that error is not harmless. And, the petitioner must win."). If, "in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error," then there is "grave doubt" about whether the error affected the jury's verdict. *McAninch*, 513 U.S. at 435; *see also Davenport*, 596 U.S. at 136 ("[W]here AEDPA asks whether *every* fairminded jurist would agree that an error was prejudicial, *Brecht* asks only whether a federal habeas court *itself* harbors grave doubt about the petitioner's verdict."). "[P]rosecutors bear the burden of proof" to show that a constitutional error did not have a substantial and injurious effect on the jury's verdict. *Stoner v. Sowders*, 997 F.2d 209, 213 (6th Cir. 1993); *see also Jaradat v. Williams*, 591 F.3d 863, 869 (6th Cir. 2010) ("Under the *Brecht* standard, the Government has the burden of showing that the error was harmless.").[12]

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12 "[B]ecause '[t]he prejudice inquiry is not the same as the sufficiency of the evidence analysis,'" a petitioner cannot be denied relief simply because there is sufficient evidence to support a conviction. *Ferensic*, 501 F.3d at 474 (quoting *Richey v. Mitchell*, 395 F.3d 660, 687 (6th Cir. 2005), *overruled on other grounds by Bradshaw v. Richey*, 546 U.S. 74 (2005)). We are thus prohibited

In applying *Brecht*, we consider "the whole body of law"–including lower-court cases– to determine whether an error was prejudicial. *Davenport*, 596 U.S. at 136. And in determining whether the jury's deliberation was affected by the error, we review the entire record de novo. *See Jaradat*, 591 F.3d at 869 ("The analysis should result from 'examination of the proceedings in their entirety.'" (quoting *Kotteakos v. United States*, 328 U.S. 750, 762 (1946))). The impact of the trial court's errors depends in part on the strength of the evidence supporting a conviction. Thus, "a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." *Towns v. Smith*, 395 F.3d 251, 260 (6th Cir. 2005) (quoting *Strickland*, 466 U.S. at 696).

B. Grave Doubt

Ferensic's facts are very similar to those here. *See Ferensic*, 501 F.3d at 470. In *Ferensic*, the only direct evidence of the defendant's guilt was the identifications made by the victimized couple. *Id.* The defense intended to undermine the veracity of the identifications by calling two witnesses, but the trial court barred both from testifying. *Id.* at 471. The first would have testified that he saw the two culprits on the night of the crime, and that Ferensic resembled neither one; and the second would have testified about the potential unreliability of victim identifications. *Id.* A panel

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"from simply focusing on the sufficiency of the evidence, especially where it entails 'stripping the erroneous action from the whole' and determining the sufficiency of what is left 'standing alone.'" *Id.* at 483 (quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)).

of this court had grave doubt as to whether the errors affected the jury's verdict because, without the excluded witnesses, "the jury had no basis beyond defense counsel's word to suspect the inherent unreliability of the [victims'] identifications." *Id.* at 482.

Likewise, the central evidence of Chandler's guilt came from the testimony of the alleged victim, A.C. As a result, the jury's verdict likely hinged on the truthfulness of A.C.'s testimony. However, the trial court prohibited Chandler from introducing evidence that may have cast reasonable doubt on the reliability of her testimony. In particular, the trial court prevented the jury from considering the following evidence: (1) CPS records detailing at least eight purportedly false allegations that A.C. had made previously, including false allegations of sexual abuse, *see supra*; (2) testimony from three sets of foster parents–the Hamblins, Nickersons, and Lamberts–who would have discussed A.C.'s prior false allegations; (3) records from another proceeding where Judge Feeney concluded that A.C. had problems with lying and making false accusations; (4) testimony from five foster care workers who had worked with A.C. in the past, all of whom were charged with protecting A.C.'s best interests and still had authored reports detailing her prior false allegations; (5) expert testimony that investigators' interviewing procedures were faulty, potentially rendering the results unreliable; and (6) expert testimony that it is a "red flag" when a child adds additional details to a story years later, R. 9-10, PID 770. As a result of the trial court's rulings, the jury had almost "no basis beyond defense counsel's word to suspect the inherent

unreliability" of A.C.'s allegations.[13] *Ferensic*, 501 F.3d at 482.

Weighing the evidence of A.C.'s past allegations against the limited direct evidence supporting Chandler's conviction, we have grave doubt about the verdict because we think that the excluded evidence could have introduced reasonable doubt into a juror's mind. *See O'Neal*, 933 F.3d at 625.

C. The State's Arguments

The State argues that any error was harmless because (1) the excluded testimony was largely duplicative of testimony given by the prosecution's witnesses and (2) there was overwhelming evidence to convict Chandler. Neither of these arguments alleviates our grave doubt about whether the trial court's errors were harmless.

1. Duplicative

The State first argues that the trial court's errors did not affect the jury's verdict because the excluded evidence was duplicative of other trial testimony. This argument fails for two reasons.

First and foremost, duplicative evidence may *strengthen* rather than weaken a petitioner's argument that he was prejudiced by a trial court's error. For example, the trial court in *O'Neal* unconstitutionally excluded testimony supporting the defendant's

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13 The only evidence the jury heard of A.C.'s potential unreliability was the fact that her testimony at trial differed from the accounts she gave investigators in two prior interviews.

argument that Hickman shot the victim. 933 F.3d at 627. The Warden in *O'Neal* argued that the trial court's errors were not prejudicial because other witnesses gave similar testimony and because O'Neal had the opportunity to cross-examine Hickman. *Id.* A panel of this court disagreed, explaining that "testimony that mirrors the content of other testimony . . . can still have considerable impact by bolstering the credibility of the other testimony." *Id.* In *O'Neal*, the purportedly duplicative evidence "could have been the straw that broke the camel's back in establishing a reasonable doubt as to [the defendant's] guilt." *Id.* The panel also rejected the Warden's argument that cross-examination could cure any potential prejudice, explaining that O'Neal's ability to impeach witnesses was significantly weaker without the excluded evidence. *Id.* at 628. Because *O'Neal*'s logic applies with the same force to Chandler's case, we reject the State's assertion that Chandler was not prejudiced simply because the excluded evidence was duplicative or because he had the opportunity to cross-examine A.C.

But even if duplicative evidence were somehow less consequential, the State's argument would fail because most of the excluded evidence was not duplicative. For example, the State argues that evidence of A.C.'s allegations would have been duplicative at trial because (1) a CPS investigator testified that she was aware that A.C. "had made prior allegations of physical abuse, not of sexual abuse," and (2) A.C. admitted on cross-examination that she had made two allegations against the Hamblins. R. 9-4, PID 333. However, Chandler was not just trying to show that A.C. made allegations in the past, but also that the allegations were *false*. Although a CPS investigator testified that

she was aware that A.C. had previously made allegations of physical abuse, she did not acknowledge that the allegations were false. Similarly, although A.C. acknowledged that she made two allegations against the Hamblins, she testified that both were true. Accordingly, the jury heard no evidence that A.C. previously made false allegations.

Had the Hamblins testified, they would have identified specific false allegations that A.C. made. For example, A.C. had alleged that the Hamblins' dog had attacked her. But when A.C. made this allegation to her counselor, she had no visible bitemarks. Sandy would have testified that, when the counselor confronted A.C., she "giggled, admitted that she lied," and said, "it's fun to lie." R. 9-9, PID 437. The Hamblins would have directly contradicted A.C.'s testimony that she never falsely accused prior foster parents of misconduct. Had Chandler obtained a copy of Judge Feeney's records in time for trial, the jury would have seen a probate court's factual findings that A.C. had made false accusations in the past and knew how to "manipulate the system." R. 9-10, PID 578. And if the foster-care workers were permitted to testify, they would have discussed A.C.'s history of false allegations. Contrary to the State's argument, this evidence would not have been duplicative, but would have been critical to the jury's consideration of whether A.C.'s testimony was credible.

The State also argues that the testimony of Kieliszewski, Chandler's expert, would have mirrored Cottrell's, the prosecution's expert. Kieliszewski would have testified that because memories typically degrade rather than strengthen, remembering memories

in greater detail over time is a "red flag." R. 9-9, PID 443. But Cottrell testified during cross-examination that memories generally "degrade" and that people, "particularly young children," could theoretically come to believe a story that was originally told as a lie. R. 9-5, PID 371. And although Kieliszewski would have discussed RAD, Cottrell answered basic questions about the condition during cross-examination.

However, notwithstanding this overlap, the experts differed in important ways. Although the prosecution's expert admitted that it is *possible* for memories to degrade, his testimony was used to advance the argument that memories can become "enriched" as a survivor of assault recounts them repeatedly. R. 9-5, PID 370. The defense expert, by contrast, would have testified that it is a "red flag" for memories to strengthen or change over time because it could indicate that "the alleged victim [has] been coached" or that "they decided to add more to their story because there's some type of reinforcement they're getting." R. 9-10, PID 770. Kieliszewski would also have testified that this concern is particularly heightened when a victim is re-interviewed several times over the course of years, as occurred with A.C., because "confabulation" could occur with each retelling–where a person may subconsciously fill in the blanks of the memory. R. 9-9, PID 442.

Additionally, Kieliszewski planned to testify about the best practices for conducting forensic interviews with potential victims of child sexual assault, a topic Cottrell did not discuss. The protocols "highly discourage" allowing a support person at an interview because it could affect an interviewee's answers, but the

investigators allowed A.C.'s adoptive mother to sit next to her for the interview. R. 9-9, PID 442. The guidelines also recommend recording forensic interviews, because an investigator's notes are frequently insufficient to describe an interview comprehensively. The investigator's report for A.C.'s final interview was just 1.5 pages long, which Kieliszewski said was "quite short" for a ninety-minute interview. *Id.* Kieliszewski would have also testified that forensic interviews should occur "early after the allegations occur" because they are considered the most reliable. *Id.* But here, A.C.'s final interview took place years after she made the allegations and differed greatly from her original account.[14]

As for the RAD-related testimony, the State is correct that the two experts gave overlapping accounts of the condition, which causes children to resist forming bonds with other people. But the testimony about RAD lost its value because the trial court excluded so much other relevant evidence. Chandler attempted to show

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14 Kieliszewski would have also explained that the guidelines require interviewers to ask questions in a neutral way and to test several different hypotheses with a child interviewee. The purpose of the alternativehypothesis testing is to avoid bias and to pinpoint the source of potentially unreliable memories–for example, if the allegation is based on something the child saw in a dream or a movie. In the context of child sexual abuse, an interviewer could ask the child about whether the abuse occurred in various environments or whether different people were responsible. By testing alternative hypotheses, investigators can better identify sources of potentially inaccurate memories. Here, A.C.'s interviewers may not have followed the alternate-hypothesis protocol, and Kieliszewski's testimony would have highlighted concerns about the inconsistency of A.C.'s repeated retellings.

that A.C. had a motive for making false accusations in the past–she wanted to be removed from each foster family and returned to her biological parents. By explaining the symptoms of RAD, combined with A.C.'s history of making false accusations, Chandler intended to show that A.C.'s accusation was motivated by a desire to avoid adoption and be removed from foster care. Had the trial court allowed the other evidence in, the RAD-related testimony would have played a more significant role.

In sum, most of the evidence that the trial court erroneously excluded was not duplicative. Combined with the fact that A.C.'s account changed with each new retelling, we have grave doubt about whether the jury would have convicted Chandler had Chandler been able to present his excluded evidence.

2. Overwhelming Evidence

Finally, the State argues that there was overwhelming evidence of Chandler's guilt. Three of Chandler's other alleged victims testified: (1) Chandler's sister Norma, who alleged that he molested her nearly fifty years prior when they were both children, (2) Z.B.–Stephanie and Lou Jr.'s eight-year-old daughter–who testified that Chandler abused her once or twice each time he saw her, and (3) Harden–Stephanie's best friend–who testified that Chandler used a "quick swipe" to clean sand "just outside of . . . the genital area" when she was young. R. 9-4, PID 337. Darlene also testified that she once saw Chandler touch A.C.'s leg in a way that "didn't look right." R. 9-5, PID 379. Finally, the Chandlers' family computer contained a written story of child sexual abuse.

However, a juror could reasonably doubt the strength or relevance of this circumstantial evidence after considering the excluded evidence challenging A.C. and others' credibility. The abuse Norma alleges would have occurred when she and Chandler were children. Harden's allegation was that Chandler cleaned sand off her, potentially in an inappropriate way, but not that he touched her in the same way as A.C. As for Z.B., her parents were in the middle of a family dispute with Chandler and Darlene. Chandler contends that Lou Jr. was trying to use his parent's land to begin a marijuana-grow operation and had threatened to kill his mother. Chandler claims that, because of the prosecution, which was triggered by Z.B.'s allegations, he was forced to sell his land. Thus, Chandler argues that Lou Jr. and Stephanie had a motive to urge their daughter to testify against him. Further, one of the witnesses the trial court excluded was Amanda Fraly, who assertedly would have testified that Lou Jr. had pressured her and others to make false allegations against Chandler. And Z.B.'s testimony, like A.C.'s, was inconsistent with the account she gave at an earlier date.

The evidence from the Chandlers' computer is alarming, but Darlene testified that pornography popped up randomly while she used the computer. Darlene also pointed out that the computer was shared with the couple's teenage sons, including one who had a history of looking at "real[ly] bad stuff." R. 9-5, PID 380.

Although the evidence the State cites could support Chandler's conviction, this is not a sufficiency-of-the-evidence case. As a result, we are "prohibit[ed]"

from "focusing on the sufficiency of the evidence, especially where it entails 'stripping the erroneous action from the whole' and determining the sufficiency of what is left 'standing alone.'" *Ferensic*, 501 F.3d at 483 (quoting *Kotteakos*, 328 U.S. at 765). Instead, to determine whether the constitutional errors had a "substantial and injurious" effect on Candler's verdict, we must use a "wider lens" to "ponder[] all that happened" at trial. *Id.* (quoting *Kotteakos*, 328 U.S. at 765). The paucity of direct evidence inculpating Chandler on this record, coupled with the considerable excluded evidence casting serious doubt on A.C.'s credibility leaves us with grave doubt about whether Chandler's verdict was affected by the trial court's errors.

IV. Conclusion

We REVERSE the district court, conditionally GRANT Chandler's habeas corpus petition, and REMAND to the district court with instructions to order Chandler's release from custody unless the State of Michigan grants him a new trial within ninety days.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LOUIS CHANDLER, #963822, Petitioner, -v- JACK KOWALSKI, Respondent.	))) No. 2:19-cv-263)) Honorable Paul) L. Maloney)))

JUDGMENT

The Court has denied Chandler's § 2254 petition for habeas relief. As required by Rule 58 of the Federal Rules of Civil Procedure, **JUDGMENT ENTERS**.

THIS ACTION IS TERMINATED.

IT IS SO ORDERED.

Date: February 23, 2023 /s/ Paul L. Maloney
Paul L. Maloney
United States
District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LOUIS CHANDLER, #963822, Petitioner,	)
	) No. 2:19-cv-263
-v-	)
	) Honorable Paul L.
JACK KOWALSKI, Respondent.	) Maloney

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner Louis Chandler filed this lawsuit under 28 U.S.C. § 2254. Chandler seeks federal habeas review of his state conviction. The Magistrate Judge issued a report recommending the Court deny the petition (ECF No. 13). Chandler filed objections (ECF No. 14). The Court will adopt the report and recommendation.

After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

1. Chandler objects to the Magistrate Judge's conclusion that the Michigan Court of Appeals' decision was not an unreasonable application of clearly established federal law or made an unreasonable determination of the facts. "Rushing to trial and striking over 20 defense witnesses denied Mr. Chandler" the right to present his defense (ECF No. 14 PageID.1013).

The Court overrules this objection. Chandler has not established that the Michigan Court of Appeals unreasonably applied clearly established federal law, specifically his right to a meaningful opportunity to present a complete defense. The Michigan Court of Appeals agreed with Chandler that the trial court abused its discretion when it denied requests for adjournment. (ECF No. 2-2 PageID.49-50). The Michigan Court of Appeals concluded that the trial judge erred when it excluded Chandler's expert witness (*id.* PageID.50-51). The Michigan Court of Appeals also found that the trial court erred when it excluded the testimony of two other foster parents (*id.* 51). As a result, the Michigan Court of Appeals considered the testimony elicited from the expert and the other foster parents that was part of the record following remand for an evidentiary hearing.

2. Chandler objects to the Magistrate Judge's "reliance on Mr. Chandler's wife as a source of a complete defense" (ECF No. 14 PageID.1014). Chandler identifies several reasons that her testimony was not a sufficient substitute for the testimony of the other foster parents.

The Court overrules this objection. The other foster parents, the Hamblins, testified at the evidentiary

hearing and the Michigan Court of Appeals considered their testimony. The Magistrate Judge did not conclude that the wife's testimony provided a complete defense. The Magistrate Judge concluded that the Michigan Court of Appeals did not make a constitutionally unreasonable application of facts. To meet the actual prejudice standard, Chandler must show more than speculation and more than a reasonable possibility that the Hambins' testimony would have changed the outcome. The Michigan Court of Appeals summarized the Hamblins' testimony, explained how that testimony would have been beneficial to Chandler at trial, and concluded that Chandler was able to make similar arguments at trial without the Hamblins' testimony.

3. Chandler objects to the manner in which the Magistrate Judge resolved the challenge to the exclusion of the defense expert. Chandler contends that the defense expert's testimony did not overlap with the testimony of the state's expert. Chandler describes the testimony of the state's witness, a social worker: "repeated interviews with a child can help sharpen and recover their memories of abuse" (ECF No. 14 PageID.1014). Chandler insists that he needed the defense expert to "rebut the state's misleading and incomplete presentation of forensic interviewing" (*id.* PageID.1015). Chandler argues that the defense expert would have rebutted that testimony by explaining how the forensic interviews of the victim departed from best practices which heightened the risk of false accusations, including the risk associated with multiple interviews.

The Court overrules this objection. First, the premise of Chandler's argument rests on facts that are

simply not in the record. The state's witness distinguished his area of expertise (therapy) from forensic interviewing (ECF No. 9-5 Trial Trans. PageID.367). And, the state's witness never testified that repeated interviews with a child will sharpen and recover memories (*id.* PageID.367-372). Second, the Magistrate Judge accurately summarized the manner in which the Michigan Court of Appeals resolved the challenge to the exclusion of the defense witness. The Michigan Court of Appeals found that Chandler could not prove actual prejudice. The court found that, at trial, defense counsel elicited testimony from the state's witness that overlapped with the testimony of the defense expert at the evidentiary hearing. The Court agrees with the Magistrate Judge's conclusion that the Michigan Court of Appeals did not make a constitutionally unreasonable application of facts.

4. Chandler objects to the Magistrate Judge's conclusion that Chandler did not suffer actual prejudice. The Court overrules this objection. This particular objection overlaps completely with the prior objections. The Michigan Court of Appeals did not make constitutionally unreasonable determination of the facts.

5. Chandler objects to the Magistrate Judge's reliance on the state court's recitation of facts. The Court overrules this objection. The Magistrate Judge did not rely on the facts outlined in the opinion issued by the Michigan Court of Appeals. The Magistrate Judge provided a block quote from the opinion to provide context for the arguments raised in Chandler's petition. The Magistrate Judge then concluded that no constitutional error occurred. As part of this objection, Chandler does not allege that the state court opinion

contained factual errors. The error allegedly occurred because of an omission of facts or testimony. Chandler then repeats his objection about the trial court's decision to exclude testimony from the Hamblins.

6. Chandler objects to the Magistrate Judge's omission of any recommendation for a certificate of appealability. The Court overrules the objection. This Court must consider whether to grant or deny a certificate of appealability when the Magistrate Judge does not make any such recommendation.

The Court **GRANTS** a Certificate of Appealability. Reasonable jurists could disagree with the manner in which the Michigan Court of Appeals resolved the claims that form the basis for this habeas petition. Reasonable jurists could compare the cross examination of the victim at trial with the testimony from the Hamblins at the evidentiary hearing and conclude that Petitioner suffered actual prejudice when the trial court prevented the Hamblins from testifying. Similarly, reasonable jurists could compare the testimony from the state's expert at trial and the testimony from the defense expert at the evidentiary hearing and conclude that Petitioner suffered actual prejudice when the trial court precluded Petitioner from calling his expert at trial.

Accordingly, the Court **ADOPTS**, as its Opinion, the Report and Recommendation (ECF No. 13). The Court **GRANTS** a certificate of appealability. **IT IS SO ORDERED.**

Date: February 23, 2023 /s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LOUIS CHANDLER #963822,

Petitioner, Case No. 2:19-cv-263

v. Hon. Paul Maloney
U.S. District Judge

JACK KOWALSKI,
Respondent.
_____/

REPORT AND RECOMMENDATION

I. Introduction

This is a habeas corpus action brought by state prisoner Louis Chandler under 28 U.S.C. § 2254. Chandler is incarcerated with the Michigan Department of Corrections based upon his jury trial conviction of two counts of first degree criminal sexual conduct, in violation of Mich. Comp. Laws §750.520b(2)(b). These convictions involved his foster daughter, who was approximately 8 years old at the time of the offenses. Chandler was sentenced to two prison terms of 25 to 75 years.

On December 30, 2019, Petitioner filed his habeas corpus petition. The petition raises four grounds for relief, as follows:

I. The trial court's denial of counsel's requests for a continuance violated Chandler's due process right to present a defense.

II. Chandler was denied his due process right to present a defense where the trial court excluded Chandler's witnesses and limited his ability to cross examine the complainant.

III. The propensity testimony admitted at trial was so prejudicial it violated Chandler's due process right to a fundamentally fair trial.

IV. The combined effect of the due process errors frustrated Chandler's right to present a defense in violation of due process.

(Pet., ECF No. 1, PageID.6-10.) Respondent has filed an answer to the petition (ECF No. 8) stating that the grounds should be denied because they are procedurally defaulted, noncognizable on habeas review, or meritless. Upon review, and applying the standards of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1214 (AEDPA), I find that the grounds are meritless or procedurally defaulted. Accordingly, I recommend that the petition be denied.

Discussion

II. Procedural history

Chandler appealed his convictions to the Michigan Court of Appeals. The Michigan Court of Appeals remanded Chandler's due process claims to the trial court for an evidentiary hearing. (ECF No. 9-10,

PageID.500 (Michigan Court of Appeals Order dated July 7, 2017).) The trial court conducted an evidentiary hearing and denied Chandler's motion for a new trial. (ECF No. 9-10, PageID.554-555 (trial court's opinion and order, and judgment); ECF No. 9-10, PageID.758-781 (evidentiary hearing transcript after remand).) After remand, the Michigan Court of Appeals affirmed the trial court's denial of the motion for a new trial. (ECF No. 9-10, PageID.468-476 (Michigan Court of Appeals opinion after remand, dated December 19, 2017).) The Michigan Supreme Court denied leave to appeal on October 2, 2018. (ECF No. 9-11, PageID.857.)

III. AEDPA standard

The AEDPA "prevent[s] federal habeas 'retrials'" and ensures that state court convictions are given effect to the extent possible under the law. *Bell v. Cone*, 535 U.S. 685, 693–94 (2002). An application for writ of habeas corpus on behalf of a person who is incarcerated pursuant to a state conviction cannot be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication: "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based upon an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254(d). "Under these rules, [a] state court's determination that a claim lacks merit precludes federal habeas relief so long as fair-minded jurists could disagree on the correctness of the state court's decision." *Stermer v. Warren*, 959 F.3d

704, 721 (6th Cir. 2020) (quoting *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)) (internal quotation marks omitted)). This standard is "intentionally difficult to meet." *Woods v. Donald*, 575 U.S. 312, 316 (2015) (internal quotation omitted).

The AEDPA limits the source of law to cases decided by the United States Supreme Court. 28 U.S.C. § 2254(d). In determining whether federal law is clearly established, the Court may not consider the decisions of lower federal courts. *Williams v. Taylor*, 529 U.S. 362, 381–82 (2000); *Miller v. Straub*, 299 F.3d 570, 578–79 (6th Cir. 2002). Moreover, "clearly established Federal law" does not include decisions of the Supreme Court announced after the last adjudication of the merits in state court. *Greene v. Fisher*, 565 U.S. 34, 37–38 (2011). Thus, the inquiry is limited to an examination of the legal landscape as it would have appeared to the Michigan state courts in light of Supreme Court precedent at the time of the state-court adjudication on the merits. *Miller v. Stovall*, 742 F.3d 642, 644 (6th Cir. 2014) (citing *Greene*, 565 U.S. at 38).

A federal habeas court may issue the writ under the "contrary to" clause if the state court applies a rule different from the governing law set forth in the Supreme Court's cases, or if it decides a case differently than the Supreme Court has done on a set of materially indistinguishable facts. *Bell*, 535 U.S. at 694 (citing *Williams*, 529 U.S. at 405–06). "To satisfy this high bar, a habeas petitioner is required to 'show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in

existing law beyond any possibility for fairminded disagreement.'" *Woods*, 575 U.S. at 316 (quoting *Harrington*, 562 U.S. at 103).

Determining whether a rule application was unreasonable depends on the rule's specificity. *Stermer*, 959 F.3d at 721. "The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Yarborough*, 541 U.S. at 664. "[W]here the precise contours of the right remain unclear, state courts enjoy broad discretion in their adjudication of a prisoner's claims." *White v. Woodall*, 572 U.S. 415, 424 (2014) (internal quotations omitted).

The AEDPA requires heightened respect for state factual findings. *Herbert v. Billy*, 160 F.3d 1131, 1134 (6th Cir. 1998). A determination of a factual issue made by a state court is presumed to be correct, and the petitioner has the burden of rebutting the presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Davis v. Lafler*, 658 F.3d 525, 531 (6th Cir. 2011) (en banc); *Lancaster v. Adams*, 324 F.3d 423, 429 (6th Cir. 2003); *Bailey v. Mitchell*, 271 F.3d 652, 656 (6th Cir. 2001). This presumption of correctness is accorded to findings of state appellate courts, as well as the trial court. *See Sumner v. Mata*, 449 U.S. 539, 546–547 (1981); *Smith v. Jago*, 888 F.2d 399, 407 n.4 (6th Cir. 1989).

Section 2254(d) limits the facts a court may consider on habeas review. The federal court is not free to consider any possible factual source. The reviewing court "is limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011). "If a review of

the state court record shows that additional fact-finding was required under clearly established federal law or that the state court's factual determination was unreasonable, the requirements of § 2254(d) are satisfied and the federal court can review the underlying claim on its merits. *Stermer*, 959 F.3d at 721 (citing, *inter alia*, *Brumfield v. Cain*, 576 U.S. 305 (2015), and *Panetti v. Quarterman*, 551 U.S. 930, 954 (2007)).

If the petitioner "satisfies the heightened requirements of § 2254(d), or if the petitioner's claim was never 'adjudicated on the merits' by a state court, 28 U.S.C. § 2254(d),"—for example, if he procedurally defaulted the claim—"AEDPA deference no longer applies." *Stermer*, 959 F.3d at 721. Then, the petitioner's claim is reviewed *de novo*. *Id*. (citing *Maples v. Stegall*, 340 F.3d 433, 436 (6th Cir. 2003)).

IV. Denial of continuances and the exclusion of the Hamblins and Kieliszewski's testimony (Arguments I and II)

Chandler argues that the trial Court's denial of his requests for trial continuances violated his due process right to present a defense. Trial began 75 days after Chandler pleaded not guilty. (ECF No. 9-10, PageID.470.) Defense counsel moved three times for a trial continuance. Each request was denied by the trial court. (*Id.*) Trial counsel requested more time because he was seeking to review the victim's foster care records. (*Id.*) Counsel received the foster care records 10 days before trial, and on the morning of trial he obtained records that indicated that the victim made false allegations against a prior foster parent. (ECF No. 2, PageID.22, ECF No. 9-3, PageID.254-256.) The

trial court excluded the prior foster parents (the Hamblins) testimony. (ECF No. 9-3, PageID.258.) The trial court excluded defense expert psychologist Jeffrey Kieliszewski from testifying due to the late disclosure of the expert's name. (*Id.*)

The Michigan Court of Appeals agreed with Chandler that the trial court abused its discretion by denying his requests for continuances of the trial and excluding testimony. Nevertheless, the Court of Appeals found that the trial court's errors did not rise to the level of a due process violation because Chandler could show no prejudice arising out the denial of the requests for continuance or from the exclusion of the Hamblins or Kieliszewski's testimony. The Michigan Court of Appeals explained:

> In particular, the only potential prejudice identified by defendant consists of the exclusion of testimony from the Hamblins and Kieliszewski. Defendant was able to develop their proposed testimony on remand, and considering their testimony at the evidentiary hearing, it is clear that exclusion of this evidence did not affect the outcome of trial.
>
> At the evidentiary hearing, the Hamblins offered their opinions that the victim was not a truthful person, and such opinion testimony would generally be admissible under MRE 608(a). Their testimony also involved specific descriptions of the victim's past fabrications of mistreatment, which she made after the Hamblins told her they intended to adopt her. Assuming arguendo that this evidence was

admissible under MRE 404(b) or another rule, its exclusion did not affect the outcome of the trial. Even without the Hamblins' testimony, defense counsel challenged the victim's credibility at trial by highlighting inconsistencies between her statements in 2010 and 2015, and questioning the victim about past lies. Additionally, defendant's wife testified that, when the victim first came to the house, workers told her and defendant that the victim made allegations against past foster parents and to "watch" her. Further, defendant's wife testified that the victim made the allegations against defendant after being told that defendant and his wife were going to adopt her. In other words, the exclusion of the Hamblins' testimony did not prevent defendant from presenting his arguments that the victim fabricated her claims and that she did so because she did not want to be adopted.

With regard to Kieliszewski, in defendant's initial appellate brief, defendant asserted that Kieliszewski would testify about RAD [Reactive Attachment Disorder] and its relationship to lying. But, on remand, Kieliszewski indicated that lying was not a "criteria" of RAD; and, more generally, Kieliszewski would not have been able to offer an expert opinion of the victim's credibility. *People v. Douglas*, 496 Mich 557, 583; 852 NW2d 587 (2014). On remand, Kieliszewski also discussed forensic interviewing protocols. He explained that the protocols highly discourage having a support person in the room and that they recommend

videotaping the interview (or at a minimum taking detailed notes). The interview with the victim was not videotaped and her adopted mother was present for the interview. On remand, Kieliszewski also discussed memory and child sexual abuse, including the fact that memory degrades over time and that memory confabulation, in which a person "fills in the blanks" with fake memories, can occur. However, while Kieliszewski likely could have offered expert testimony regarding forensic interview protocols and memory generally, see MRE 702, the exclusion of his testimony did not affect the outcome. Defense counsel was able to question the prosecutor's expert about memory, and the prosecutor's expert acknowledged that children sometimes lie and that those lies can become actual memories. Likewise, defense counsel questioned the forensic interviewer at trial, who conceded that having a support person was not recommended. Moreover, to some extent, Kieliszewski described "best practices;" and, while the interview was not taped, notes were taken. On this record, Kieliszewski's testimony would not have changed the outcome.

More generally, we note that the victim's testimony was not the only evidence at trial. The record also shows that defendant had committed acts of criminal sexual conduct against other young girls, including his step-granddaughter, his sister, and a family friend. This pattern of conduct by defendant spanning almost 50 years bolstered the victim's credibility

> and supported a propensity inference. See *People v Watkins*, 491 Mich 450, 491; 818 NW2d 296(2012); *People v Solloway*, 316 Mich App 174, 193; 891 NW2d 255 (2016). Considering this other evidence, any error in the denial of defendant's requests for an adjournment as well as the exclusion of testimony from the Hamblins and Kieliszewski does not entitle defendant to relief.

(ECF No. 9-10, PageID.472-474 (notes omitted).)

The determination to grant or deny a request for a continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964). The unjustifiable denial of a continuance may result in the denial of the right to present a defense. *Id.* The circumstances of each case must be evaluated to determine whether the denial of a continuance was so arbitrary that it violated due process. *Id.* Petitioner must establish actual prejudice "by showing that a continuance would have made relevant witnesses available or added something to the defense." *United States v. Harbour*, 417 Fed. Appx. 507, 513 (6th Cir. 2011) (quoting *United States v. King*, 127 F.3d 483, 487 (6th Cir. 1997)).

It is indisputable that under federal law a criminal defendant has the right to "a meaningful opportunity to present a complete defense." *California v. Trombetta,* 467 U.S. 479, 485 (1984); *see also Chambers v. Mississippi,* 410 U.S. 284, 294 (1973).

> The right to compel a witness' presence in the courtroom could not protect the integrity of the adversary process if it did not embrace the right to have the witness' testimony heard by the trier of fact. The right to offer testimony is thus grounded in the Sixth Amendment even though it is not expressly described in so many words: "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law."

Taylor v. Illinois, 484 U.S. 400, 409 (1988) (quoting *Washington v. Texas*, 388 U.S 14, 19 (1967)). However, the right to present a defense is not absolute. *Id.* at 409. A judge may "exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury", or may exclude evidence that is repetitive or only marginally relevant. *Holmes v. South Carolina*, 547 U.S. 319, 326 (2006).

The Michigan Court of Appeals determined that Chandler could show no prejudice despite the trial court's error in denying defense counsel's requests for continuances, limiting testimony, and in excluding witnesses. For reasons of finality, comity, and

federalism, habeas petitioners "are not entitled to habeas relief based on trial error unless they can establish that it resulted in 'actual prejudice.'" *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993) (quoting *United States v. Lane*, 474 U.S. 438, 449 (1986)). There must be more than a "reasonable possibility" that the error was harmful. *Brecht*, 507 at 637 (internal quotation marks omitted). The *Brecht* standard reflects the view that a "State is not to be put to th[e] arduous task [of retrying a defendant] based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error." *Calderon v. Coleman*, 525 U.S. 141, 146 (1998) (per curiam).

The Michigan Court of Appeals determined that the Hamblins' testimony would have been admissible generally under MRE 608(a) and likely under MRE 404(b). (ECF No. 9-10, PageID.472.) Their testimony concerned the victim's past fabrications of mistreatment against the Hamblins. (*Id.*) The Court determined that defense counsel brought out similar testimony during trial by highlighting inconsistencies of the victim's statements in 2010 and 2015 and by questioning the victim about past lies. (*Id.*, PageID.473.) Chandler's wife also testified that she was warned by the victim's past foster parents that the victim had made allegations and to "watch" her. (*Id.*) Chandler's wife testified that the victim made up lies after they told her they would adopt her because she did not want to be adopted. (*Id.*) The Court determined that the Hamblins' testimony would not have changed the outcome of the trial. (*Id.*, PageID.474.)

Similarly, the Michigan Court of Appeals determined Kieliszewski's testimony would not have changed the outcome of the trial because his testimony was limited and general. (*Id.*, PageID.474.) At the evidentiary hearing Kieliszewski testified that lying was not a "criteria" of RAD, nor could he offer an expert opinion regarding the victim's credibility. (*Id.*) Kieliszewski could have offered testimony regarding forensic protocols such as recommending videotaping the interview, taking detailed notes, and to discourage having a support person present. (*Id.*) Defense counsel elicited testimony about the prosecutor's expert's memory and forensic protocols generally. (*Id.*) The expert testified at trial that having a support person during the interview was not recommended and that children sometimes lie and those lies become their actual memories. (*Id.*) In view of the totality of the trial testimony and evidence, the Court of Appeals determined that the exclusion of the Hamblins and Kieliszewski as trial witnesses did not change the outcome of the trial. (*Id.*)

This Court is aware that predicting the impact of a witness's live testimony is difficult. Each witness reacts differently to the pressures of trial, and a jury's collective credibility determination might shift on a small issue. Nevertheless, in this habeas proceeding, the Court must determine whether the Michigan courts erred by applying an unreasonable application of clearly established federal law or made an unreasonable determination of the facts. The Michigan Court of Appeals correctly determined that Chandler did not suffer any actual prejudice as a result of the trial court's denial of his request for continuances and by the exclusion of the Hamblins and Kieliszewski's

testimony. In the opinion of the undersigned, The Michigan Court of Appeals decision (1) was not contrary to or did not involve an unreasonable application of clearly established federal law, or (2) was not based on an unreasonable determination of the facts.

V. Prior bad acts testimony (claim III)

Chandler argues that the Court erred by allowing the testimony of his sister and a family friend who each testified that they were molested by Chandler when they were young girls. Chandler argues that the admission of this evidence denied fundamental fairness because it was egregious and unfairly prejudicial. The Michigan Court of Appeals reviewed for plain error because Chandler made no objection to the admission of this testimony during trial. (*Id.*, PageID.475.) The Court noted that Chandler also made a due process argument in addition to arguing that the evidence should be excluded under MRE 405 due to temporal proximity, reliability, and prejudice. (*Id.*) The Court denied his arguments by explaining:

> The charged conduct in this case involved digital-vaginal penetration perpetrated by defendant against the 8-year-old victim while she was living in his home as his foster daughter. In comparison, NJK, who was defendant's sister, testified that defendant touched her breasts and had her touch him when she was approximately 8 to 10 years old. Weighing the *Watkins* factors, NJK's testimony was not overly prejudicial. Although the temporal proximity of the other acts involving NJK was almost 50 years, this factor alone is not

dispositive, *People v Brown*, 294 Mich App 377, 387; 811 NW2d 531 (2011), and the other considerations weighed in favor of the testimony's probative value. NJK was approximately the same age as the victim when the abuse occurred, both incidents involved sexual touching by defendant, and both victims lived in the same household as defendant. NJK's testimony thus tends to establish defendant's propensity to sexually touch young female members in his household. As noted in *Watkins*, the propensity inference weighs "in favor of the evidence's probative value rather than its prejudicial effect." *Watkins*, 491 Mich at 487. In addition, the trial court provided a jury instruction regarding the evidence, and a limiting instruction lessens the potential for prejudice because "jurors are presumed to follow their instructions." *People v Mann*, 288 Mich App 114, 118; 792 NW2d 53 (2010). In sum, admitting NJK's testimony was within the range of principled outcomes. *Daniels*, 311 Mich App at 265. Defendant has not shown plain error. *Carines*, 460 Mich at 762-765.

With respect to JH, similar reasoning supports the admission of her testimony. JH testified that defendant touched the outside of her genital areas, under her clothing, when she was approximately 10 years old. Although JH was not related to defendant or living in his home, JH's mother knew defendant, and the incident occurred inside defendant's home when JH was invited over for dinner. JH was a similar age as the victim, and the touching of her

> genital area was similar to the digital-vaginal penetration in the charged offense. Thus, JH's testimony showed defendant's propensity to commit sexual crimes against young girls, specifically within his own house. The incident occurred approximately 17 years before trial; however, the passage of time and JH's relationship with ZB's mother did not make her testimony overly prejudicial particularly when the trial court also provided a jury instruction as noted above. Overall, admission of JH's testimony was within the range of principled outcomes, and the trial court did not abuse its discretion by admitting JH's testimony. *Daniels*, 311 Mich. App. at 265. Defendant has not shown plain error.

(*Id.*, PageID.476.)

Respondent argues that Chandler procedurally defaulted this claim because he failed to object to the admission of this testimony at trial. After expressly noting Chandler's default in failing to object, the Michigan Court of Appeals then reviewed the claim for plain error, finding none. In this circuit, "plain error review does not constitute a waiver of state procedural default rules." *Seymour v. Walker*, 224 F.3d 542 (6th Cir. 2000) (citations omitted); *see also Wogenstahl v. Mitchell*, 668 F.3d 307, 337 (6th Cir. 2012); *Fleming v. Metrish*, 556 F.3d 520, 530 (6th Cir. 2009); *Keith v. Mitchell*, 455 F.3d 662, 673-74 (6th Cir. 2006). Chandler procedurally defaulted this claim due to his failure to make a contemporaneous objection during trial to NJK and JH's testimony. *Taylor v. McKee*, 649 F.3d 446, 450 (6th Cir. 2011) (petitioner procedural defaulted habeas

claims by failing to make a contemporaneous objection during trial and the state court's plain error review prevented the state courts from considering the merits of the claim).

Because Petitioner procedurally defaulted his federal claims in state court, he must demonstrate either (1) cause for his failure to comply with the state procedural rule and actual prejudice flowing from the violation of federal law alleged in his claim, or (2) that a lack of federal habeas review of the claim will result in a fundamental miscarriage of justice. *House v. Bell*, 547 U.S. 518, 536 (2006); *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). The miscarriage-of-justice exception only can be met in an "extraordinary" case where a prisoner asserts a claim of actual innocence based upon new reliable evidence. *House*, 547 U.S. at 536. A habeas petitioner asserting a claim of actual innocence must establish that, in light of new evidence, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt. *Id.* (citing *Schlup v. Delo*, 513 U.S. 298, 327 (1995)).

First, Chandler fails to support a credible claim of actual innocence. Second, Chandler does not show cause for his failure to object by pointing to "some objective factor external to the defense" that prevented him from complying with the rule. *Murray v. Carrier*, 477 U.S. 478, 495 (1986). In the opinion of the undersigned, Chandler's failure to set forth cause for his procedural default requires dismissal of these procedurally defaulted claims.

Additionally, Chandler's claims are based upon evidentiary rulings under state law. The extraordinary

remedy of habeas corpus lies only for a violation of the Constitution. 28 U.S.C. § 2254(a). As the Supreme Court explained in *Estelle v. McGuire*, 502 U.S. 62 (1991), an inquiry whether evidence was properly admitted or improperly excluded under state law "is no part of the federal court's habeas review of a state conviction . . . [for] it is not the province of a federal habeas court to re-examine state-court determinations on state-law questions." *Id.* at 67–68. Rather, "[i]n conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Id.* at 68. "Generally, state-court evidentiary rulings cannot rise to the level of due process violations unless they 'offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Seymour v. Walker*, 224 F.3d 542, 552 (6th Cir. 2000) (quoting *Montana v. Egelhoff*, 518 U.S. 37, 43 (1996)); *see also Wilson v. Sheldon*, 874 F.3d 470, 475–76 (6th Cir. 2017). This approach accords the state courts wide latitude in ruling on evidentiary matters. *Seymour*, 224 F.3d at 552 (6th Cir. 2000).

Further, under the AEDPA, the court may not grant relief if it would have decided the evidentiary question differently. The court may only grant relief if Petitioner is able to show that the state court's evidentiary ruling was in conflict with a decision reached by the Supreme Court on a question of law or if the state court decided the evidentiary issue differently than the Supreme Court did on a set of materially indistinguishable facts. *Sanders v. Freeman*, 221 F.3d 846, 860 (6th Cir. 2000). Petitioner has not met this difficult standard.

Finally, assuming Chandler presented cognizable habeas claims regarding the propensity testimony, his claims fail to support a violation of the Constitution. Chandler recognizes that his state law evidentiary claims are not cognizable and characterizes his claim as due process violations. There is no clearly established Supreme Court precedent that holds that a state court violates the Due Process Clause by permitting propensity evidence in the form of other bad acts evidence. In *Estelle v. McGuire*, the Supreme Court declined to hold that the admission of prior acts evidence violated due process. *Estelle*, 502 U.S. at 75. The Court stated in a footnote that because it need not reach the issue, it expressed no opinion as to whether a state law would violate due process if it permitted the use of prior crimes evidence to show propensity to commit a charged crime. *Id.* at 75 n.5. While the Supreme Court has addressed whether prior acts testimony is permissible under the Federal Rules of Evidence, *see Old Chief v. United States*, 519 U.S. 172 (1997); *Huddleston v. United States*, 485 U.S. 681 (1988), it has not explicitly addressed the issue in constitutional terms. The Sixth Circuit has found that "[t]here is no clearly established Supreme Court precedent which holds that a state violates due process by permitting propensity evidence in the form of other bad acts evidence." *Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003).

It is the opinion of the undersigned, that because there was no constitutional violation in the admission of evidence (bad acts), the state court decision was "far from" an unreasonable determination of the facts considering the evidence presented. *Clark v. O'Dea*, 257 F.3d 498, 502 (6th Cir. 2001).

VI. Combined effect of evidentiary errors (claim IV)

Chandler argues that by excluding his witnesses, admitting bad acts evidence, and limiting his cross-examination of the victim, the trial court frustrated his right to present a defense. Chandler argues that the effect of these multiple errors raises "grave doubt whether a trial error of federal law had substantial and injurious effect or influence in determining the jury's verdict." *O'Neil v. Balcarcel*, 933 F.3d 618 (6th Cir. 2019) (notes omitted).

First, Chandler never exhausted his combined error/combined prejudice claim in the state courts, so for that reason his claim is unexhausted and is barred from federal review. *Keith v. Mitchell*, 455 F.3d 662, 679 (6th Cir. 2006). At the very least, Chandler's failure to raise this claim in the state courts is procedurally defaulted. *Id*. For the reasons stated above, Chandler has failed to present Constitutional error and the cumulative effect of the alleged errors fail to support a different result. *Id.* "The Supreme Court has not held that constitutional claims that would not individually support habeas relief may be cumulated in order to support relief." *Scott v. Elo*, 302 F.3d 598, 607 (6th Cir. 2002); *see also Williams v. Anderson*, 460 F.3d 789, 816 (6th Cir. 2006) ("Nonetheless, the law of this Circuit is that cumulative error claims are not cognizable on habeas because the Supreme Court has not spoken on this issue."). Finally, because I concluded above that the individual claims are without merit, Petitioner cannot show that the cumulative error, combined error, or combined prejudice violated his constitutional rights. *Seymour*, 224 F.3d at 557.

VII. Conclusion

Recommended Disposition

For the foregoing reasons, I recommend that the habeas corpus petition be denied.

Dated: February 3, 2023 ***/s/ Maarten Vermaat***
MAARTEN VERMAAT
U.S. MAGISTRATE JUDGE

NOTICE TO PARTIES

Any objections to this Report and Recommendation must be filed and served within 14 days of service of this notice on you. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to file timely objections may constitute a waiver of any further right of appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *see Thomas v. Arn*, 474 U.S. 140 (1985).

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 19, 2017

v

No. 329605
Kent Circuit Court
LC No. 15-003589-FC

LOUIS CHARLES CHANDLER,
Defendant-Appellant.

AFTER REMAND

Before: SAWYER, P.J., and HOEKSTRA and BECKERING, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(2)(b). Defendant appealed as of right. He also filed a motion to remand, requesting an evidentiary hearing and the opportunity to move the trial court for a new trial. We granted defendant's motion to remand.[1] On remand, the trial court conducted an evidentiary hearing and denied defendant's

[1] *People v Chandler*, unpublished order of the Court of Appeals, entered July 7, 2017 (Docket No. 329605).

motion for a new trial. The case is now before us following the remand proceedings. For the reasons explained in this opinion, we affirm.

Defendant's CSC-I convictions relate to sexual abuse perpetrated by defendant on his foster daughter. The abuse occurred in 2010, when the victim was approximately 8 years old. She was removed from the home; but, no criminal charges were brought at that time. In 2014, defendant's 8-year-old step-granddaughter, ZB, disclosed that defendant had inappropriately touched her. Following ZB's disclosure, the victim in this case was forensically interviewed, and defendant was charged with CSC relating to the victim. The trial was held in 2015, when the victim was 12 years old.

At trial, the victim detailed the sexual abuse committed against her by defendant, and the prosecutor also presented other acts evidence from ZB, defendant's sister, and a family friend as well as evidence that defendant had pornographic stories involving child sexual abuse on his computer. There were inconsistencies in the victim's current description of events as compared to her initial report to authorities in 2010. The prosecutor called an expert on child sexual abuse disclosure, who testified regarding memory and child sexual abuse.

The defense theory of the case at trial was that the victim fabricated the allegations of sexual abuse after defendant and his wife filed papers to adopt the victim because she did not want to be adopted. Defense counsel asserted that the victim—who had Reactive Attachment Disorder (RAD)—had lied in the past to

manipulate adults in order to be removed from other foster homes. The jury convicted defendant as noted above.

Defendant appealed as of right. In his initial appellate brief, defendant raised a variety of claims relating to the trial court's denial of defendant's requests for an adjournment, the trial court's exclusion of defense witnesses, ineffective assistance of counsel, and the admission of other-acts evidence. As noted, defendant also filed a motion to remand, and we granted defendant's motion to remand for an evidentiary hearing and to allow defendant to move for a new trial.

On remand, a factual record was developed with respect to three proposed defense witnesses who were precluded from testifying at trial. Two of these witnesses—Randy and Sandy Hamblin—were former foster parents for the victim and they had applied to adopt the victim. Their testimony related to purported lies that the victim told while in their care, specifically allegations by the victim that she had been abused by the Hamblins. The third defense witness was psychologist Jeffrey Kieliszewski, a proposed defense expert who would have offered testimony regarding forensic interviewing protocols and memory, including an explanation of memory confabulation and how memory degrades over time. At the evidentiary hearing, defendant's trial counsel also testified. Following the hearing, the trial court denied defendant's motion for a new trial. The case is now before us following the remand proceedings, and the parties have filed supplemental briefs.

I. REQUEST FOR AN ADJOURNMENT & EXCLUSION OF DEFENSE WITNESSES

On appeal, defendant argues that the trial court abused its discretion in denying defendant's requests to adjourn trial to allow defense counsel an opportunity to investigate reports that the victim had previously fabricated allegations of abuse by foster parents and to allow time for the defense expert, Kieliszewski, to review the case. According to defendant, the effect of denying defendant's request for an adjournment was to deprive defendant of due process, a fair trial, and the right to present a defense. Additionally, defendant maintains that the trial court abused its discretion by preventing the defense from calling Kieliszewski as an expert witness at trial based on a discovery violation and that the trial court abused its discretion by excluding the Hamblins' testimony. Although we are troubled by some of the trial court's decisions, in light of the record developed on remand, we conclude that defendant has not shown prejudice and he is not entitled to relief on appeal.

We review a trial court's decision on a motion for an adjournment for an abuse of discretion. *People v Daniels*, 311 Mich App 257, 264-265; 874 NW2d 732 (2015). "An abuse of discretion occurs when the trial court's decision is outside the range of principled outcomes." *Id.* at 265. To the extent defendant's claims involve constitutional arguments, our review of constitutional issues is de novo. *Id.*

"A reasonable time for adequate preparation of the accused's defense is the first essential of trial fairness," *United States v Garner*, 507 F3d 399, 408 (CA 6

2007), and "the desire of the trial courts to expedite court dockets is not a sufficient reason to deny an otherwise proper request for a continuance," *People v Jackson*, 467 Mich 272, 279 n 7; 650 NW2d 665 (2002). However, "to invoke the trial court's discretion to grant a continuance or adjournment, a defendant must show both good cause and diligence." *People v Coy*, 258 Mich App 1, 18; 669 NW2d 831 (2003). "'Good cause factors include whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments." *Id.* (citation and quotation marks omitted).

Procedurally, the current case followed a relatively accelerated timeline in the trial court, despite defense counsel's repeated requests for an adjournment. Defendant entered a not guilty plea in the circuit court on April 22, 2015, and trial began 75 days later on July 6, 2015. During this comparatively brief period for defense preparation, on May 11, the prosecutor informed defendant that the prosecution would be calling an expert witness regarding child sexual abuse and the prosecutor filed a notice of intent to use other acts evidence of sexual abuse committed by defendant. On June 11, defendant requested and received funds to hire Kieliszewski as an expert, and on June 16, defendant filed a motion to compel, seeking records relating to prior false accusations of abuse made by the victim. On June 26, 2015, at a hearing on defendant's motion to compel, defense counsel asked for an adjournment to investigate the victim's history of false accusations and to allow Kieliszewski an opportunity to review the case. The trial court denied the motion. On June 30, defense counsel filed a motion for

reconsideration, asserting that an adjournment was necessary to investigate the victim's history of lying and making false allegations to manipulate her foster care placements. Defense counsel stated that he had not completed his investigation, that there were 31 possible witnesses identified in the Child Protective Services (CPS) documents relating to the victim, and that, if counsel did not have more time, he would be ineffective at trial. The trial court denied the motion. On July 6, 2015, the first day of trial, defense counsel again requested an adjournment, stating that he had recently received a report from D.A. Blodgett in which it was noted there were "serious doubts" about the truth of the victim's claims given her history of false accusations. Defense counsel sought time to investigate the factual basis for this opinion, and defense counsel noted that defendant's expert had not yet completed review of the case. The trial court again denied the motion.

On this record, we see no reasonable or principled basis for denying defendant's request for an adjournment, and we are persuaded that the trial court abused its discretion. In denying defendant's requests, the trial court failed to even consider the good cause factors. Considering the good cause factors, it is clear they weigh in favor of an adjournment. First of all, in seeking an adjournment, defendant asserted constitutional rights. Specifically, he argued that counsel would be ineffective unless given additional time to investigate and that a continuance was necessary to protect defendant's right to present a defense and to a fair trial. See *People v Sekoian*, 169 Mich App 609, 614; 426 NW2d 412 (1988). Second, defendant had a legitimate reason for asserting these rights. Defense counsel had

obtained records indicating that the victim had a history of fabricating allegations against foster parents and counsel had retained an expert to review the case. In other words, counsel did not vaguely request additional time; rather, based on documentation and the recent retention of an expert, counsel had legitimate and specific areas that he wanted to investigate in order to provide defendant with a defense. Third, with respect to negligence, given the relatively short pretrial timeline in this case, we are not persuaded by the prosecutor's assertions that defendant was negligent in investigating the victim's history of lying or in retaining an expert. Fourth, defendant had not received any other adjournments. On this record, given the seriousness of the charges involved as well as the short litigation timeline, the lack of previous adjournments, and defense counsel's sound arguments for requesting an adjournment, it may not have been the most expedient course of action, but it would have promoted the cause of justice to grant an adjournment in this case. MCR 2.503(D)(1). See also *People v Grace*, 258 Mich App 274, 277; 671 NW2d 554 (2003).

In addition to denying defendant's requests for an adjournment, the trial court also excluded Kieliszewski's testimony at trial as a sanction for defendant's failure to identify Kieliszewski as an expert as required by MCR 6.201(A). Additionally, defense counsel named the Hamblins as witnesses. However, while defense counsel sought to admit evidence of the victim's past manipulations of her foster care placements under MRE 404(b) as evidence of her motive to lie or as evidence of a common plan, scheme, or system of doing an act, the trial court instead considered the evidence under MRE 608 and held that extrinsic

evidence could not be used to attack the victim's credibility. "A trial court's decision to permit or deny the late endorsement of a witness is reviewed for an abuse of discretion," *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008), and we review evidentiary decisions for an abuse of discretion, *Daniels*, 311 Mich App at 271.

With regard to Kieliszewski's expert testimony, the prosecutor made a demand for discovery before trial; but, defense counsel did not list Kieliszewski as an expert witness until July 7, 2015, i.e., the second day of trial; and defendant did not provide the prosecutor with a summary of Kieliszewski's proposed testimony. Thus, defendant clearly violated MCR 6.201(A), which requires disclosure, upon request, of all expert witnesses the party intends to call at trial as well as a description of the substance of the expert's proposed testimony. See MCR 6.201(A)(1) and (A)(3). When there has been a discovery violation, the trial court has discretion to determine the appropriate remedy. MCR 6.201(J). "When determining the appropriate remedy for discovery violations, the trial court must balance the interests of the courts, the public, and the parties in light of all the relevant circumstances, including the reasons for noncompliance." *People v Banks*, 249 Mich App 247, 252; 642 NW2d 351 (2002). "[T]he exclusion of a witness is an extreme sanction that should not be employed if the trial court can fashion a different remedy that will limit the prejudice to the party injured by the violation while still permitting the witness to testify." *People v Rose*, 289 Mich App 499, 526; 808 NW2d 301 (2010).

In this case, the trial court excluded Kieliszewski's expert testimony based on defendant's failure to comply with MCR 6.201(A). Having concluded that the trial court abused its discretion by denying defendant's repeated requests for an adjournment, we also find that the trial court abused its discretion by imposing this extreme sanction. That is, after receiving notice that the prosecutor intended to call an expert, defendant sought and obtained funds for an expert from the trial court. This request was granted on June 11, when there were already fewer than 28 days before trial. Defense counsel then repeatedly requested an adjournment, citing as the reasons for the request the need for additional investigation and, in particular, the need to have Kieliszewski review the case. Indeed, on the first day of trial, defense counsel again requested an adjournment, noting that Kieliszewski had not completed review of the files. On this record, the reasons for defense counsel's noncompliance with the court rule included the accelerated timeline, the expert's delay in reviewing the case, and the trial court's unreasonable refusal to permit an adjournment. Moreover, given that defense counsel received court approval for funds to hire an expert and that there was talk of defendant's expert at earlier hearings, the prosecutor could not have been caught unaware by the fact that defendant intended to call an expert. On this record, imposing the extreme sanction of excluding Kieliszewski's testimony, rather than adjourning the case as repeatedly requested by defense counsel or fashioning some other remedy, was an abuse of discretion. See *Rose*, 289 Mich App at 526.

In terms of the Hamblins' testimony, we note that the trial court employed the wrong framework when

considering the admissibility of extrinsic evidence regarding the victim's history of making false allegations. In the trial court, defense counsel specifically argued that this evidence of the victim's previous fabrications was admissible under MRE 404(b) to show the victim's motive for lying and to establish that the victim had a common scheme, plan or design in making false accusations in order to be removed from foster care placements. However, the trial court failed to consider whether the evidence was admissible under MRE 404(b) and instead repeatedly characterized the evidence as extrinsic evidence of specific instances of conduct, which is inadmissible under MRE 608(b) to attack a witness's credibility. While extrinsic evidence might not be admissible to impeach credibility under MRE 608(b), evidence that is inadmissible for one purpose may be admissible for another purpose, *Yost*, 278 Mich App at 355, and extrinsic evidence may be used for MRE 404(b) purposes, *People v Jackson*, 475 Mich 909, 910; 717 NW2d 871 (2006). By failing to operate within the correct framework and by failing to even consider whether the evidence was admissible under MRE 404(b), the trial court abused its discretion.[2] See *People v Hine*, 467 Mich 242, 251; 650 NW2d 659 (2002); *People v Kelly*, 317 Mich App 637, 644-645; 895 NW2d 230 (2016).

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[2] On appeal, aside from the Hamblins' testimony, defendant objects more generally to the trial court's exclusion of evidence "derived from the CPS reports," but he does not explain what other evidence relating to the CPS reports was excluded. Thus, apart from the Hamblins' testimony, we deem the issue abandoned. See *People v Henry*, 315 Mich App 130, 148-149; 889 NW2d 1 (2016).

Although we have determined that the trial court abused its discretion in several of its rulings, we nevertheless conclude that any error did not affect the outcome of the trial and thus defendant is not entitled to relief on appeal. See *Coy*, 258 Mich App at 18-19 ("[T]he trial court's denial of a request for an adjournment or continuance is not grounds for reversal unless the defendant demonstrates prejudice as a result of the abuse of discretion."); *People v King*, 297 Mich App 465, 472; 824 NW2d 258 (2012) ("A preserved trial error . . . excluding evidence is not grounds for reversal unless, after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative.").[3] In

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[3] On appeal, defendant attempts to frame his arguments as constitutional claims involving the denial of the right to present a defense and a violation of due process. Based on his assertion that his constitutional rights have been violated, defendant argues that the prosecutor bears the burden on appeal of showing beyond a reasonable doubt that there is no reasonable possibility that the denial of his request for an adjournment and the exclusion of his witnesses contributed to his conviction. See *People v Anderson (After Remand)*, 446 Mich 392, 405; 521 NW2d 538 (1994); *People v Smith*, 249 Mich App 728, 730; 643 NW2d 607 (2002). However, contrary to defendant's arguments, the trial court's decisions in this case did not deprive defendant of due process or his constitutional right to present a defense. See *Ungar v Sarafite*, 376 US 575, 589; 84 S Ct 841, 849; 11 L Ed 2d 921 (1964) ("[I]t is not every denial of a request for more time that violates due process."). Defendant was represented by counsel at trial, cf. *Chandler v Fretag*, 348 US 3, 9-10; 75 S Ct 1; 99 L Ed 4 (1954); and, despite the adjournment and exclusion of witnesses, as discussed in more detail *infra*, defense counsel presented defendant's argument that the victim fabricated the allegations against defendant. In short, we reject defendant's argument that the prosecutor must prove any error harmless beyond a reasonable doubt. See *People v Blackmon*, 280 Mich App 253, 270-271; 761 NW2d 172 (2008).

particular, the only potential prejudice identified by defendant consists of the exclusion of testimony from the Hamblins and Kieliszewski. Defendant was able to develop their proposed testimony on remand, and considering their testimony at the evidentiary hearing, it is clear that exclusion of this evidence did not affect the outcome of trial.

At the evidentiary hearing, the Hamblins offered their opinions that the victim was not a truthful person, and such opinion testimony would generally be admissible under MRE 608(a). Their testimony also involved specific descriptions of the victim's past fabrications of mistreatment, which she made after the Hamblins told her they intended to adopt her.[4] Assuming arguendo that this evidence was admissible under MRE 404(b) or another rule,[5] its exclusion did not affect the outcome of the trial. Even without the Hamblins' testimony, defense counsel challenged the victim's credibility at trial by highlighting inconsistencies between her statements in 2010 and 2015, and questioning the victim about past lies. Additionally, defendant's wife testified that, when the victim first came to the house, workers told her and defendant that the victim made allegations against past foster

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[4] For instance, according to the Hamblins, the victim reported that Randy picked her up by her hair and swung her around in the air, that Sandy beat her with a wooden spoon, that the Hamblins dressed her in clothing that was too small, and that their dog attacked her. According to the Hamblins' testimony, these allegations were investigated and determined to be "unfounded."

[5] In addition to defendant's arguments based on MRE 404(b), defendant asserts that some of the victim's statements, such as her statement that it is "fun" to lie, may have been admissible under MRE 613(b).

parents and to "watch" her. Further, defendant's wife testified that the victim made the allegations against defendant after being told that defendant and his wife were going to adopt her. In other words, the exclusion of the Hamblins' testimony did not prevent defendant from presenting his arguments that the victim fabricated her claims and that she did so because she did not want to be adopted.

With regard to Kieliszewski, in defendant's initial appellate brief, defendant asserted that Kieliszewski would testify about RAD and its relationship to lying. But, on remand, Kieliszewski indicated that lying was not a "criteria" of RAD; and, more generally, Kieliszewski would not have been able to offer an expert opinion of the victim's credibility. *People v Douglas*, 496 Mich 557, 583; 852 NW2d 587 (2014). On remand, Kieliszewski also discussed forensic interviewing protocols. He explained that the protocols highly discourage having a support person in the room and that they recommend videotaping the interview (or at a minimum taking detailed notes). The interview with the victim was not videotaped and her adopted mother was present for the interview. On remand, Kieliszewski also discussed memory and child sexual abuse, including the fact that memory degrades over time and that memory confabulation, in which a person "fills in the blanks" with fake memories, can occur. However, while Kieliszewski likely could have offered expert testimony regarding forensic interview protocols and memory generally, see MRE 702, the exclusion of his testimony did not affect the outcome. Defense counsel was able to question the prosecutor's expert about memory, and the prosecutor's expert acknowledged that children sometimes lie and that

those lies can become actual memories. Likewise, defense counsel questioned the forensic interviewer at trial, who conceded that having a support person was not recommended. Moreover, to some extent, Kieliszewski described "best practices;" and, while the interview was not taped, notes were taken. On this record, Kieliszewski's testimony would not have changed the outcome.

More generally, we note that the victim's testimony was not the only evidence at trial. The record also shows that defendant had committed acts of criminal sexual conduct against other young girls, including his step-granddaughter, his sister, and a family friend. This pattern of conduct by defendant spanning almost 50 years bolstered the victim's credibility and supported a propensity inference. See *People v Watkins*, 491 Mich 450, 491; 818 NW2d 296 (2012); *People v Solloway*, 316 Mich App 174, 193; 891 NW2d 255 (2016). Considering this other evidence, any error in the denial of defendant's requests for an adjournment as well as the exclusion of testimony from the Hamblins and Kieliszewski does not entitle defendant to relief.[6]

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[6] On appeal, defendant also argues that his trial counsel provided ineffective assistance by failing to conduct pre-trial investigation in a timely manner and by failing to name Kieliszewski as an expert in the time required by the discovery rules. In our judgment, defense counsel performed an adequate pretrial investigation in the time allowed; indeed, ultimately, defense counsel was well-prepared at trial and presented thorough cross-examination and arguments. Cf. *Solloway*, 316 Mich App at 189. With regard to Kieliszewski, defense counsel's performance was restricted by the abbreviated timeline in this case, though perhaps counsel should

II. OTHER-ACTS EVIDENCE

Finally, defendant argues that the trial court erred in admitting two of the prosecution's witnesses, NJK and JH, who testified regarding other-acts evidence. Defendant further argues that the admission of this evidence denied him due process.

This Court reviews a trial court's evidentiary decision for an abuse of discretion. *People v Cameron*, 291 Mich App 599, 608; 806 NW2d 371 (2011). However, defendant did not preserve his constitutional argument. Thus, to this extent, we review the issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In a criminal case in which the defendant is accused of committing CSC-I against a minor, based on MCL 768.27a, the prosecutor may "offer evidence of another sexual offense committed by the defendant against a minor without having to justify its admission under MRE 404(b)." *Solloway*, 316 Mich App at 192. "Under MCL 768.27a, evidence is relevant, and therefore admissible, when offered to show the defendant's propensity to commit the charged crime." *Id.* at 193. However, "[r]elevant evidence that is admissible under MCL 768.27a may still be excluded under MRE

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have filed a more timely witness list naming Kieliszewski as expert. See *People v Pickens*, 446 Mich 298, 327; 521 NW2d 797 (1994). But, even if we concluded that counsel performed unreasonably, as discussed, defendant has not shown prejudice resulting from the exclusion of Kieliszewski or the Hamblins, and thus he is not entitled to relief on this basis. See *People v Traver*, 316 Mich App 588, 604; 894 NW2d 89 (2016).

403." *Id.* at 193. Although MCL 768.27a is subject to MRE 403, "when applying MRE 403 to evidence admissible under MCL 768.27a, courts must weigh the propensity inference in favor of the evidence's probative value rather than its prejudicial effect." *Watkins*, 491 Mich at 487.

> This does not mean, however, that other-acts evidence admissible under MCL 768.27a may never be excluded under MRE 403as overly prejudicial. There are several considerations that may lead a court to exclude such evidence. These considerations include (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony. [*Id.* at 487-488.]

Moreover, "[i]n cases in which a trial court determines that MRE 403 does not prevent the admission of other-acts evidence under MCL 768.27a, [a standard jury] instruction is available to ensure that the jury properly employs that evidence." *Id.* at 490.

On appeal, defendant does not challenge the relevance of the other-acts evidence under MCL 768.27a; rather, he argues that certain other-acts evidence should have been excluded under MRE 403. Specifically, he contends that the acts involving NJK and JH lacked temporal proximity, that JH's testimony

regarding a single instance of abuse was unreliable because she was friends with ZB's mother, and that the incestuous nature of defendant's conduct with NJK was overly prejudicial.

The charged conduct in this case involved digital-vaginal penetration perpetrated by defendant against the 8-year-old victim while she was living in his home as his foster daughter. In comparison, NJK, who was defendant's sister, testified that defendant touched her breasts and had her touch him when she was approximately 8 to 10 years old. Weighing the *Watkins* factors, NJK's testimony was not overly prejudicial. Although the temporal proximity of the other acts involving NJK was almost 50 years, this factor alone is not dispositive, *People v Brown*, 294 Mich App 377, 387; 811 NW2d 531 (2011), and the other considerations weighed in favor of the testimony's probative value. NJK was approximately the same age as the victim when the abuse occurred, both incidents involved sexual touching by defendant, and both victims lived in the same household as defendant. NJK's testimony thus tends to establish defendant's propensity to sexually touch young female members in his household. As noted in *Watkins*, the propensity inference weighs "in favor of the evidence's probative value rather than its prejudicial effect." *Watkins*, 491 Mich at 487. In addition, the trial court provided a jury instruction regarding the evidence, and a limiting instruction lessens the potential for prejudice because "jurors are presumed to follow their instructions." *People v Mann*, 288 Mich App 114, 118; 792 NW2d 53 (2010). In sum, admitting NJK's testimony was within the range of principled outcomes. *Daniels*, 311 Mich

App at 265. Defendant has not shown plain error. *Carines*, 460 Mich at 762- 765.

With respect to JH, similar reasoning supports the admission of her testimony. JH testified that defendant touched the outside of her genital area, under her clothing, when she was approximately 10 years old. Although JH was not related to defendant or living in his home, JH's mother knew defendant, and the incident occurred inside defendant's home when JH was invited over for dinner. JH was a similar age as the victim, and the touching of her genital area was similar to the digital-vaginal penetration in the charged offense. Thus, JH's testimony showed defendant's propensity to commit sexual crimes against young girls, specifically within his own house. The incident occurred approximately 17 years before trial; however, the passage of time and JH's relationship with ZB's mother did not make her testimony overly prejudicial, particularly when the trial court also provided a jury instruction as noted above. Overall, admission of JH's testimony was within the range of principled outcomes, and the trial court did not abuse its discretion by admitting JH's testimony. *Daniels*, 311 Mich App at 265. Defendant has not shown plain error.[7] *Carines*, 460 Mich at 762-765.

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[7] We note also that, on appeal, defendant does not challenge the admission of ZB's evidence, which like JH's and NJK's testimony demonstrated that defendant had a propensity to molest young girls. Given the admission of other evidence demonstrating this propensity, even assuming some error in the admission NJK's or JH's testimony, the admission of their testimony did not affect the outcome, and defendant is not entitled to relief. See *King*, 297 Mich App at 472.

Affirmed.

/s/ David H. Sawyer
/s/ Joel P. Hoekstra
/s/ Jane M. Beckering

Order

Michigan Supreme Court
Lansing, Michigan

October 2, 2018

Stephen J. Markman,
157202 Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v SC: 157202
COA: 329605
Kent CC: 15-003589-FC

LOUIS CHARLES CHANDLER,
Defendant-Appellant.
_____/

On order of the Court, the application for leave to appeal the December 19, 2017 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.

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.

October 2, 2018 *Larry S. Royster*
Clerk

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)
File Name: 25a0202p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOUIS CHANDLER,

Petitioner-Appellant,

v. — No. 23-1270

MIKE BROWN, Warden,

Respondent-Appellee.

On Petition for Rehearing En Banc
United States District Court for the Western District of Michigan at Marquette.
No. 2:19-cv-00263—Paul Lewis Maloney, District Judge.

Decided and Filed: July 31, 2025
Before: WHITE, STRANCH, and DAVIS, Circuit Judges.

COUNSEL

ON PETITION FOR REHEARING EN BANC and MEMORANDUM OF LAW SUPPLEMENTING THE PETITION FOR REHEARING EN BANC: Ann M. Sherman, Jared D. Schultz, OFFICE OF THE

MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee. **ON RESPONSE:** Matthew A. Monahan, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Detroit, Michigan, Jessica Zimbelman, STATE APPELLATE DEFENDER OFFICE, Detroit, Michigan, for Appellant.

The court delivered an ORDER denying the petition for rehearing en banc. THAPAR and MURPHY, JJ., (pp. 3–28), delivered a separate opinion dissenting from the denial of the petition for rehearing en banc, in which GRIFFIN and READLER, JJ., concurred.

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision.

The petition was then circulated to the full court.* Less than a majority of the judges voted in favor of rehearing en banc.

Therefore, the petition is denied.

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* Hon. Whitney D. Hermandorfer did not participate in this decision.

DISSENT

THAPAR and MURPHY, Circuit Judges, dissenting. Louis Chandler sexually abused his eight-year-old foster daughter. At trial, she told the jury in graphic detail about how Chandler molested her. She wasn't the first one Chandler had sexually abused. Three other victims testified about the abuse they suffered at his hands. Even Chandler's wife corroborated his foster daughter's claims of sexual abuse by Chandler.

So how did Chandler convince a panel of this court to grant him habeas relief? He tells us that the state trial court wrongly prohibited a different foster couple from testifying that the victim had previously made false allegations against them soon after they proposed to adopt her. According to Chandler, their testimony could have shown that the victim had a motive to falsely accuse Chandler too, so that she could return to her birth parents. Never mind that, by the time of the victim's testimony at trial, she had been adopted by another family and living with them for almost five years without accusing them of misconduct. Never mind that the victim did not make allegations of sexual abuse against the prior foster parents; she alleged that they did things like hit her with a wooden spoon, pull her by the ponytail, and give her ill-fitting clothes. And never mind that at least one of the victim's accusations against the prior foster parents (that they put soap in her mouth) turned out to be true. (The parents are now on a child abuse registry.) Chandler still claims that his foster daughter's alleged prior

accusations against this other couple about these other events were central to his defense to the charged sexual abuse.

A Michigan appellate court held that the trial court committed various state-law errors in the process of excluding this evidence. Ultimately, though, that court held that these state-law errors did not rise to a federal constitutional violation. And it found the errors harmless after assuming (without deciding) that some of Chandler's key evidence might have been admissible.

This federal habeas case thus asks: If a state appellate court concludes that a trial court's exclusion of evidence misapplied an otherwise valid rule of evidence or procedure, when does that *state-law* violation infringe the *federal* Constitution? Always? Never? Sometimes? If so, when? The Supreme Court has yet to confront this question, let alone clearly establish the ground rules that should govern it. *Cf. Nevada v. Jackson*, 569 U.S. 505, 510 (2013) (per curiam). And even if the Court eventually extends its "balancing of interests" approach to this new context, the Michigan appellate court did not unreasonably apply that approach. *Id.* Indeed, it's doubtful that the other foster couple's testimony would have been admissible even under a proper interpretation of Michigan law. And the state court could reasonably find that Chandler did not have a "significant interest" in presenting this evidence anyway. *United States v. Scheffer*, 523 U.S. 303, 316-17 (1998). Unlike the excluded evidence in the Supreme Court cases that found a constitutional violation, the excluded evidence here did not concern "'facts' about the alleged crime at hand." *Id.* at 317 &

n.13. So we are hard-pressed to see how the rejection of Chandler's 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." 28 U.S.C. § 2254(d)(1). This should foreclose Chandler's claim under the Antiterrorism and Effective Death Penalty Act (AEDPA).

The panel's contrary reasoning violates AEDPA in several ways. It improperly invokes evidence that the state court found forfeited or that was not in the state court record. And it fails to provide the great deference owed to state courts when a petitioner relies on general constitutional principles. The panel's decision also undercuts AEDPA's federalism and comity goals. For example, Chandler's trial required four victims to testify about his abuse. Now these victims must relive their trauma by testifying again. Our full court should have prevented this result because the panel committed the types of errors that the Supreme Court has seen fit to summarily reverse. *See Cassano v. Shoop*, 10 F.4th 695, 696-97 (6th Cir. 2021) (Griffin, J., dissenting from denial of rehearing en banc) (collecting 22 cases, including 12 summary reversals, in which the Court reversed the Sixth Circuit "for not applying the deference to statecourt decisions mandated by AEDPA").

I.

A Michigan jury convicted Chandler of criminal sexual misconduct, so he no longer receives any presumption of innocence in this habeas proceeding. *See Herrera v. Collins*, 506 U.S. 390, 399-400 (1993).

Unlike the panel, we describe the facts in the light most favorable to the jury's guilty verdict–not in the light most favorable to Chandler.

Chandler and his wife fostered an eight-year-old girl, A.H., for a few months. (Although the panel opinion refers to the victim as "A.C.," only Chandler uses these initials for her. We thus use A.H.) Foster parents are supposed to provide a stable home. But Chandler did not. In the few months he had custody of A.H., he sexually assaulted her twice.

The day after one such incident, A.H. reported the sexual abuse to Chandler's wife, who then reported Chandler to the authorities. At the time, Michigan prosecutors decided to let the abuse go.

It took four years–and Chandler molesting another child–for anything to happen. Chandler's 8-year-old step-granddaughter later reported that Chandler had inappropriately touched her. At this time, Chandler's family also came forward with the names of two other victims of Chandler's sexual abuse, as well as child pornography that they found on the family computer. Michigan indicted Chandler with four counts of first-degree criminal sexual conduct for his abuse of A.H. By then, A.H. had been adopted by the family with whom she had been living for almost five years.

During discovery, Chandler received a report from Child Protective Services ("CPS"). His attorney said the document revealed A.H.'s history of "false allegations." (The record does not contain this report. And the Michigan Court of Appeals held that Chandler abandoned any arguments based on it. *People v.*

Chandler, No. 329605, 2017 WL 6502801, at *4 n.2 (Mich. Ct. App. Dec. 19, 2017) (per curiam).) After receiving the report, Chandler asked to hire an expert on child sex-abuse allegations. The court granted Chandler's request.

Chandler's lawyer then moved to compel additional discovery and to continue the trial so he could have more time to investigate. The government, for its part, pointed to the CPS report Chandler had received over a month earlier, and stated that it didn't have any other relevant records. The trial court denied most of Chandler's requests.

The day trial was set to start, Chandler's lawyer renewed his request for a continuance. Chandler's lawyer stated that his expert needed more time to review the case, although the lawyer hadn't given the expert "any of the information" about A.H.'s past allegations. R. 9-3, Pg. ID 254-56. His lawyer also asked for more time to conduct discovery, including about A.H.'s past allegations. The government reiterated that it had "turned over everything that [it] had and intended to use" almost two months before. *Id.* at Pg. ID 257.

The court denied Chandler's motion. Chandler's lawyer also failed to disclose the expert's name to the government. So the trial court found that Michigan's procedural rules barred the expert from testifying. *See* Mich. Ct. R. 6.201(A)(1).

The trial court separately barred Chandler from calling witnesses to testify about A.H.'s prior allegations on the grounds that this testimony was improper

"extrinsic evidence." R. 9-3, Pg. ID 258; *see* Mich. R. Evid. 608(b). The court again denied his lawyer's motion for a continuance. On the second day of trial, the court also prohibited Chandler from calling those witnesses because he hadn't timely disclosed them.

Once trial began, the government put A.H. on the stand. She testified about at least two times that Chandler inappropriately touched her. During cross-examination, Chandler's lawyer asked A.H. about inconsistencies with her past statements. He also asked her about previous allegations against another foster couple. She admitted it was "possible" that she had made up an allegation that the family's dog attacked her. R. 9-4, Pg. ID 321. But she insisted that her other allegations of physical abuse against that couple were true. Counsel also asked about other past allegations, which she couldn't remember.

The government presented supporting testimony from three other female victims, including Chandler's step-granddaughter. They all testified that Chandler had inappropriately touched them when they were between five and ten years old. (The abuse of one victim occurred when both Chandler and the victim were children.)

Chandler's wife also testified. She corroborated aspects of A.H.'s account, including the parts of Chandler's inappropriate behavior that she saw firsthand. And she reported that she found pornographic images of young girls on the family computer in a folder entitled "Lou's notes." R. 9-5, Pg. ID 378-79. Finally, a computer analyst testified about "stories relating to

child sexual abuse" that he discovered on Chandler's computer. *Id.* at Pg. ID 363.

The jury convicted Chandler.

On appeal, a Michigan appellate court found that the trial court abused its discretion by denying Chandler's requests for continuances, by excluding his expert witness, and by employing the wrong evidentiary framework when considering the admissibility of A.H.'s alleged prior false accusations against her previous foster family, the Hamblins. *Chandler*, 2017 WL 6502801, at *3-4. But the court found that none of these errors prejudiced Chandler. *Id.* at *4. And it rejected Chandler's attempt to transform these state-law issues into a federal constitutional claim about his "right to present a defense." *Id.* at *4 n.3.

Chandler sought federal habeas relief. The district court denied his petition. But a panel of our court reversed, finding that the Michigan appellate court unreasonably applied Supreme Court precedent. *See Chandler v. Brown*, 126 F.4th 1178, 1194 (6th Cir. 2025). Our en banc court granted review but then returned the case to the panel for the entry of an amended opinion. *Chandler v. Brown*, 136 F.4th 689, 690 (6th Cir. 2025) (order) (en banc); *Chandler v. Brown*, 137 F.4th 525 (6th Cir. 2025) (per curiam) (amended panel opinion).

II.

The panel held that the Michigan trial court's exclusion of evidence violated Chandler's constitutional right to put on a complete defense and that the

Michigan Court of Appeals violated AEDPA in rejecting Chandler's constitutional claim. The panel's reasoning commits basic habeas errors. To start, the panel relies on a large amount of evidence (mostly hearsay) that the Michigan Court of Appeals found abandoned. The panel ignores the state court's forfeiture conclusion–which qualifies as an adequate and independent state-law ground to deny relief. Next, when we limit Chandler's claim to the evidence developed in state court, the Michigan Court of Appeals did not come close to committing "an unreasonable application" of "clearly established" Supreme Court precedent under AEDPA. 28 U.S.C. § 2254(d)(1). Indeed, we remain unconvinced that the exclusion of Chandler's main evidence (the Hamblins' testimony) even violated Michigan law.

A.

1.

To evaluate Chandler's claim that the state court prevented him from presenting a complete defense, we must first identify the evidence that Chandler says was necessary to his defense.

Before the Michigan Court of Appeals, Chandler argued that he needed to introduce two categories of evidence: (1) testimony from two of A.H.'s previous foster parents, Randy and Sue Hamblin, and (2) testimony from Chandler's proposed expert, Jeff Kieliszewski. *See Chandler*, 2017 WL 6502801, at *2. Chandler limited himself to these three witnesses only. As the Michigan Court of Appeals explained, Chandler identified "the exclusion of testimony from

the Hamblins and Kieliszewski" as "the only potential prejudice" to his defense. *Id.* at *4.

And for good reason. After Chandler's conviction, the Michigan Court of Appeals remanded the case to give Chandler the opportunity to build a record about the testimony of all excluded witnesses. *Id.* at *1. The trial court allowed Chandler's witnesses to explain what they would have said at trial if they had taken the stand. *Id.* At that evidentiary hearing, though, Chandler developed a record only about the proposed testimony of the Hamblins and Kieliszewski. *Id.* So when his case returned to the Michigan Court of Appeals, Chandler couldn't argue that the exclusion of any other witnesses had prejudiced him.

What's more, the Michigan Court of Appeals clarified that its key holding on which today's panel relies–that the trial court abused its discretion by failing to consider whether Chandler's evidence of A.H.'s prior false accusations was admissible under Michigan Rule of Evidence 404(b)–applied only to "the Hamblins' testimony." *Id.* at *4. That is, the trial court erred by failing to consider whether "the Hamblins' testimony" might have been admissible under Rule 404(b). *Id.* To be sure, Chandler had asserted that the trial court should have admitted other evidence as well. *Id.* at *4 n.2. But the Michigan Court of Appeals held that Chandler had forfeited those arguments by failing to adequately develop them. So "apart from the Hamblins' testimony," it "deem[ed] the issue abandoned." *Id.* Putting it all together, Chandler's constitutional claim in this federal proceeding must rise or fall on a theory that he needed the testimony of the Hamblins and Kieliszewski to present a complete defense.

Despite this forfeiture holding, the panel opinion repeatedly discusses evidence that is not properly before this court. It mentions that Chandler's trial counsel suggested he would have liked to call (1) two of A.H.'s prior foster families, the Nickersons and the Lamberts, (2) a woman named Amanda Fraly, and (3) five foster care employees. *Chandler*, 137 F.4th at 532-33. But Chandler didn't develop what those witnesses would have said at the evidentiary hearing designed for that purpose. That is why the Michigan appellate court properly deemed those witnesses abandoned.

The panel also describes nine allegations that A.H. allegedly made in the past. *Id.* at 533. But more than half of these purported allegations go beyond the scope of the testimony that the Hamblins offered at the evidentiary hearing. Indeed, of the nine purported allegations discussed in the panel opinion, the most serious ones are irrelevant to Chandler's federal habeas claim. Those include A.H.'s supposed allegations that (1) a cousin abused her, (2) a daycare provider hit her, (3) a prior foster parent sexually abused her, and (4) a foster care worker raped her. *Id*. These purported allegations aren't before this court, since neither the Hamblins nor Kieliszewski could or would have testified about them.

The panel decision inexplicably discusses these claimed accusations without mentioning the Michigan Court of Appeals' forfeiture holding. *See Chandler*, 2017 WL 6502801, at *4 & n.2; *see also Wong v. Money*, 142 F.3d 313, 322 (6th Cir. 1998) (explaining that a claim must be "presented to the state courts under the same theory in which it is later presented in federal court"). That holding represents an independent and

adequate state-law ground for rejecting Chandler's arguments that rely on the forfeited evidence. *Hand v. Houk*, 871 F.3d 390, 412 (6th Cir. 2017). And a federal court may not grant habeas relief based on evidence that a petitioner did not present to the state court. *Cullen v. Pinholster*, 563 U.S. 170, 181-82 (2011).

Finally, the panel mentions an order issued by a Michigan family court judge, Judge Kathleen Feeney, and the records underlying that order. *Chandler*, 137 F.4th at 532, 549. In the panel's telling, that order contained "factual findings" that were "useful to Chandler." *Id.* at 532. How does the panel know? Candidly, we're not sure, because this order isn't in the record.

The panel adds that "[h]ad Chandler obtained a copy of Judge Feeney's records in time for trial, the jury would have seen a probate court's factual findings" that A.H. had made prior false accusations. *Id.* at 549. But Chandler *did* obtain those records in time for trial. His counsel admitted that he got the records "on the day of trial" and used them during crossexamination of the witnesses. R. 9-5, Pg. ID 348; R. 9-9, Pg. ID 435. While the panel asserts that the jury "would have seen a probate court's factual findings," Chandler's counsel did not believe the records were admissible. *Chandler*, 137 F.4th at 549; R. 9-9, Pg. ID 435. That is why he never provided those records to the government and never moved to admit them at trial.

What's more, even if we wanted to make arguments for Chandler, we can't. Why? He has never put the records into evidence, even though he has had them for ten years. He didn't do so at trial. He didn't do so at the evidentiary hearing. He didn't do so in his

supplemental brief to the Michigan Court of Appeals after the evidentiary hearing. *See generally* R. 2-5. So it's no surprise that the Michigan Court of Appeals didn't discuss Judge Feeney's records in its opinion. And AEDPA prohibits our reliance on the records now. *See Pinholster*, 563 U.S. at 181-82.

In short, the panel's speculative reliance on what would have happened if Chandler had "obtained a copy of Judge Feeney's records in time for trial" conflicts with the facts and the law. *Chandler*, 137 F.4th at 549. Chandler had the records. He used them at trial. R. 9-9, Pg. ID 434-35. But we do not have them. So we cannot use them to grant Chandler federal habeas relief.

* * *

All told, the panel opinion mentions reams of forfeited material that can't serve as the basis for habeas relief. By indulging in a discussion of this forfeited material, the panel has improperly resurrected unpreserved arguments on Chandler's behalf. *Wong*, 142 F.3d at 322; *Wagner v. Smith*, 581 F.3d 410, 418 (6th Cir. 2009).

2.

With that in mind, we summarize the evidence that is properly before this court. Chandler first wanted to introduce the testimony of A.H.'s previous foster parents, Randy and Sue Hamblin. *See Chandler*, 2017 WL 6502801, at *1. The Hamblins would have opined at trial that A.H. "was not a truthful person." *Id.* at *5. And they would have testified that A.H. made the following four false accusations against

them: (1) that Randy Hamblin picked up A.H. by her ponytail and swung her in the air; (2) that Sandy Hamblin beat A.H. with a wooden spoon; (3) that the Hamblins dressed A.H. in clothes that were too small; and (4) that the Hamblins' dog attacked A.H. *Chandler*, 2017 WL 6502801, at *5 n.4. But they would have admitted that another one of A.H.'s allegations was at least partially true: that Randy Hamblin had put soap in her mouth. The Michigan authorities told the Hamblins that "this was not an appropriate punishment due to [A.H.'s] history of possible abuse." R. 9-9, Pg. ID 459 (affidavit of Randy Hamblin). And they put the Hamblins on a "'central registry' for child abuse" that barred them from being foster parents. *Id.*

Chandler next wanted to introduce Kieliszewski's expert testimony. *See Chandler*, 2017 WL 6502801, at *3. This expert would have discussed memory "confabulation" (the reliance on "fake memories") and the degradation of memories over time. *Id.* at *5. The expert also would have testified that a forensic interview of A.H. violated standard protocols because she had a support person with her (her adopted mother) and because the interview was not recorded. *See id.*

The trial court excluded these three witnesses from testifying. It excluded the Hamblins' testimony under Michigan Rule of Evidence 608(b) as improper "extrinsic evidence" designed to impeach A.H. on matters collateral to Chandler's abuse. *See id.* at *4. The court also appears to have excluded these witnesses from testifying under Michigan Court Rule 6.201(A)(1) because Chandler had failed to identify them before trial. *See also* Mich. Comp. Law § 767.94a(1)-(2). And it barred Kieliszewski's expert testimony under

Michigan Court Rule 6.201(A)(1) because Chandler's lawyer had also failed to timely disclose the expert before trial.

The Michigan appellate court held that the trial court misapplied these state rules of evidence and procedure by excluding Chandler's evidence. *See Chandler*, 2017 WL 6502801, at *3-4. It suggested that defense counsel's failure to timely disclose the expert arose from the trial court's unreasonable failure to grant a continuance. *See id.* at *3. And it suggested that A.H.'s accusations against the Hamblins *might* have been admissible "other acts" evidence under Michigan Rule of Evidence 404(b), even if this testimony was inadmissible under Rule 608(b). *See id.* at *5. Yet the Court of Appeals stopped short of holding that the evidence *would* have been admissible under Rule 404(b). *See id.* ("[a]ssuming arguendo" that the evidence was admissible under Rule 404(b) or another rule). It also rejected Chandler's federal constitutional claim that the exclusion of these three witnesses violated his "right to present a defense." *Id.* at *4 n.3. The court explained that Chandler was represented by counsel at trial, and "defense counsel presented defendant's argument that the victim fabricated the allegations against defendant." *Id.*

B.

Under AEDPA, Chandler must show that the Michigan appellate court's rejection of his constitutional 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." 28 U.S.C. §

2254(d)(1). This text requires him to first identify a legal rule rooted in the holdings of Supreme Court decisions. *See Fields v. Jordan*, 86 F.4th 218, 231-32 (6th Cir. 2023) (en banc). The text also requires him to show that the state appellate court either adopted a conflicting legal rule or applied the established rule in such an "obviously" mistaken manner "that its error lies 'beyond any possibility for fairminded disagreement.'" *Shinn v. Kayer*, 592 U.S. 111, 118 (2020) (per curiam) (citation omitted). Chandler cannot satisfy these standards.

We start with the requirement to identify the "clearly established" law. Undoubtedly, the Supreme Court has established that several provisions of the Constitution together give criminal defendants "a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citation omitted). Yet it has also made clear that the Constitution does not superimpose uniform rules of evidence on top of the evidentiary rules that the States themselves choose to adopt. *See Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). So the Court has "rarely" held that the exclusion of evidence under an evidentiary rule violates the Constitution. *Jackson*, 569 U.S. at 509. And it has made clear that the Constitution permits a state court to exclude a defendant's evidence under "well-established rules," such as those barring irrelevant or unfairly prejudicial testimony. *Holmes*, 547 U.S. at 326.

That said, the Court has found five unique evidence rules unconstitutional over the years. *See Jackson*, 569 U.S. at 509 (collecting cases). Start with *Washington v. Texas*, 388 U.S. 14 (1967). There, an

isolated Texas statute prevented defendants from introducing the testimony of charged "coparticipants" in the crime unless the coparticipants had been acquitted. *Id.* at 16 & n.4. Under this evidence rule, a defendant on trial for murder could not call as a witness the person who had been convicted for the same murder and who would have testified that the defendant tried to stop it. *Id.* at 16-17. This "absurd[]" rule barred only defendants–and not the prosecution–from calling accomplices to the charged crime. *Id.* at 22. The Court thus held that the rule's enforcement violated the defendant's right to present a complete defense "because the State arbitrarily denied him the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed." *Id.* at 23.

The Court issued a similar holding in *Chambers v. Mississippi*, 410 U.S. 284 (1973). In that case, the State had charged the defendant with murdering a policeman. *Id.* at 286-87. Another man had previously confessed to the murder but then recanted. *See id.* at 287-88. At trial, the defendant sought to admit this man's prior confessions, but a "strict application of certain Mississippi rules of evidence" "thwarted" these efforts. *Id.* at 289. The defendant called the man as a witness but couldn't cross-examine him under a rule barring parties from crossexamining their own witnesses. *Id.* at 291, 294. Further, under a hearsay rule, the defendant couldn't introduce evidence from three other people to whom the man had confessed. *Id.* at 292. The Court held that the "exclusion of this critical evidence, coupled with the State's refusal to permit Chambers to cross-examine" the man, violated

Chambers's due process rights. *Id.* at 302. But it cautioned that its holding was limited to "the facts and circumstances" of the specific case. *Id.* at 303.

The Court decided *Crane* next. There, a defendant confessed to a murder, and a state court rejected his claim that the confession had been involuntary given the coercive conditions under which he had given it. *See Crane*, 476 U.S. at 684-86. At trial, the defense sought to convince the jury that it should not believe his confession because of the coercive conditions. *Id.* at 685. But the trial court excluded the evidence of those conditions on the ground that this evidence went only to whether the confession had been voluntary and not to the question whether it was credible. *Id.* at 686-87. The Court held that this ruling violated the defendant's right to present a complete defense because the state court had not "advanced any rational justification" for the exclusion and because the evidence was relevant to whether the jury should believe the confession. *Id.* at 688-91.

In *Rock v. Arkansas*, the Court found unconstitutional a bright-line "evidentiary rule prohibiting the admission of hypnotically refreshed testimony." 483 U.S. 44, 45 (1987). There, a woman charged with killing her husband could not "remember the precise details of the shooting," so she submitted to hypnosis. *Id.* at 46. The trial court excluded all her hypnotically induced testimony. *Id.* at 47-48. The Court held that the State's *per se* rule categorically barring this type of testimony qualified as "an arbitrary restriction on the right to testify" because the State had not adequately

shown the invalidity of "all posthypnosis recollections." *Id.* at 61.

Lastly, the Court in *Holmes* considered a rule that barred defendants from introducing evidence implicating a third party in the crime if the prosecution's "forensic evidence" strongly showed that the defendant had committed it. 547 U.S. at 321. The Court found this rule of evidence "arbitrary" because it did "not rationally serve" the purposes that allegedly justified it: excluding remote or speculative evidentiary matters. *Id.* at 327-28, 331.

The Court has, by contrast, upheld an evidence rule that banned the admission of polygraph evidence because this ban arguably served a valid purpose without affecting any significant interest of defendants. *See Scheffer*, 523 U.S. at 308-12, 315-17. As for the State's interest, polygraph evidence was of debatable reliability. *See id.* at 308-12. As for the defendant's interest, the ban on polygraph evidence did not prevent the defendant from introducing "'facts' about the alleged crime at hand"; it prevented the defendant from introducing only facts about his testimony's credibility. *Id.* at 316-17 & n.13. Summarizing these cases, the Court has held that an evidence rule violates the Constitution only if it is "'arbitrary' or 'disproportionate to the purposes [it is] designed to serve'" and if it "infringe[s] upon a weighty interest of the accused." *Id.* at 308 (quoting *Rock*, 483 U.S. at 56, 58). In other words, the Constitution does not permit "arbitrary" rules that "exclude[] important defense evidence but that [do] not serve any legitimate interests." *Holmes*, 547 U.S. at 325.

C.

The Michigan appellate court's decision did not engage in an "unreasonable application" of these "clearly established" principles under AEDPA. 28 U.S.C. § 2254(d)(1).

To start, we question whether these principles can even qualify as "clearly established" law in this case. In *Washington*, *Chambers*, *Crane*, *Rock*, and *Holmes*, the Court found unconstitutional novel or antiquated rules of evidence or procedure. The rule in *Washington* barred accomplices charged with the same crime from testifying on behalf of a defendant. 388 U.S. at 16 & n.4. The rule in *Chambers* barred defendants from cross-examining their own witnesses. 410 U.S. at 295-96. The rule in *Crane* barred defendants from introducing evidence about the conditions of their confession. 476 U.S. at 686-87. The rule in *Rock* barred defendants from providing testimony recalled after hypnosis. 483 U.S. at 56. And the rule in *Holmes* barred defendants from introducing exculpatory evidence showing that another person committed the crime if the prosecution possessed strong "forensic evidence" pointing to their guilt. 547 U.S. at 321. In each case, the Court balanced the state justifications for these *evidence rules* against their effects on the accused.

This case is different. The Michigan trial court did not exclude the testimony of the Hamblins and Kieliszewski under some peculiar rule of evidence or procedure. To the contrary, it relied on "well-established rules" that Chandler does not challenge as a general matter. *Holmes*, 547 U.S. at 326. The court excluded the Hamblins' testimony based on the

ubiquitous rule barring parties from impeaching a witness's credibility (here, A.H.'s credibility) with extrinsic evidence about the witness's prior conduct (here, her past allegations against the Hamblins). *Cf.* Fed. R. Evid. 608(b). In another AEDPA case involving prior (purportedly false) allegations, the Supreme Court has already held that "[t]he constitutional propriety of this rule cannot be seriously disputed." *Jackson*, 569 U.S. at 510. Next, the trial court excluded Kieliszewski's testimony based on an equally common rule requiring parties to disclose their witnesses ahead of trial. *Cf.* Fed. R. Crim. P. 16(b)(1)(C)(ii). The Supreme Court has likewise held that none of its precedents "clearly establishes" the unconstitutionality of this type of "notice" mandate. *Jackson*, 569 U.S. at 510. It has added that its precedent also does not clearly establish any requirement for a court to engage in "a case-by-case balancing of interests before such a rule can be enforced." *Id.*

Chandler instead argues that the state trial court violated his right to put on a complete defense by *misapplying* these otherwise *valid* rules of evidence and procedure. How should we analyze this different type of claim? The parties do not cite a Supreme Court decision on that issue. *Cf. United States v. Reynolds*, 86 F.4th 332, 351 (6th Cir. 2023). Will the Court extend its ban on "arbitrary" evidentiary rules by holding that arbitrary *applications* of valid rules also violate the right to assert a complete defense? *Holmes*, 547 U.S. at 325. If so, will it extend its balancing approach (measuring the state interest against the defendant's interest) to that new frontier? How should courts measure the state interest when the underlying state rule did not justify the exclusion? How badly must a

state court misapply a traditional rule for this state-law error to qualify as a constitutional violation? The answers to these questions are not obvious to us. And the lack of clarity in existing precedent all but dooms relief in this AEDPA context. If we don't even know the constitutional test that applies, how could the state court have unreasonably applied that test? That is why the Supreme Court has held that a legal rule's rationale does not qualify as clearly established if a federal "habeas court must extend [that] rationale before it can apply to the facts at hand." *White v. Woodall*, 572 U.S. 415, 426 (2014) (citation omitted).

Still, we need not rest on this conclusion. We read the Michigan Court of Appeals' rejection of Chandler's constitutional claim as engaging in the type of balancing that the Supreme Court has used when evaluating the constitutionality of evidence rules. It reasoned that the exclusion of evidence did not violate Chandler's constitutional rights because defense counsel was able to present Chandler's argument that "the victim fabricated the allegations against" him. *Chandler*, 2017 WL 6502801, at *4 n.3. In other words, the state court held that the exclusion did not violate a "weighty" enough interest of Chandler's. *Scheffer*, 523 U.S. at 308. Because a "fairminded" judge could have balanced the relevant interests in this fashion, the state court did not unreasonably apply the Supreme Court's cases. *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

1.

Start with the state "interests" in the exclusion of the evidence. *Holmes*, 547 U.S. at 325.

a.

Fairminded jurists could conclude that the Michigan trial court's exclusion of Chandler's key evidence–the Hamblins' testimony about A.H.'s false allegations–was supportable by a valid state justification. The trial court would have been within its discretion to exclude the Hamblins' testimony, even under a proper interpretation of Michigan evidence law.

As an initial matter, the panel opinion repeatedly asserts–as though it were a given–that A.H.'s prior (and allegedly false) accusations against the Hamblins were admissible under Michigan Rule of Evidence 404(b). *Chandler*, 137 F.4th at 536 (asserting that "the jury should have heard evidence of A.C.'s prior false allegations"); *id.* at 543 (claiming that the evidence was "clearly admissible under Rule 404(b)"). In doing so, the panel overreads the Michigan Court of Appeals' decision, which didn't find Chandler's evidence admissible. *See Chandler*, 2017 WL 6502801, at *4-5. Rather, the state appellate court held only that the trial court abused its discretion by failing to *consider* whether Rule 404(b) allowed the evidence. *Id.* at *4. So it didn't decide, one way or the other, whether the evidence actually would have been admissible. *Id.* at *4-5.

And sure enough, there is reason to doubt the admissibility of Chandler's proffered evidence about A.H.'s false allegations. Recall that the Hamblins would have testified that A.H. made the following accusations against them: (1) that Randy Hamblin picked up A.H. by her hair and swung her in the air;

(2) that Sandy Hamblin beat A.H. with a wooden spoon; (3) that the Hamblins dressed A.H. in clothes that were too small for her; and (4) that the Hamblins' dog attacked A.H. *Id.* at *5 n.4. Fairminded jurists could deem this hearsay evidence inadmissible for two independent reasons.

First, a fairminded jurist could exclude the Hamblins' testimony under Rule 404(b) because the evidence didn't actually show that A.H. followed a scheme (or had a motive) to fabricate sexual abuse accusations. A.H.'s allegations against the Hamblins had nothing to do with a sexual assault. Allegations that the Hamblins dressed their child in the wrong kind of clothing, or had an aggressive dog, or chose to discipline their child through methods like hairpulling and the use of a wooden spoon, don't approach the gravity of an accusation of sexual assault. Surely a reasonable jurist could conclude that a scheme or plan to falsely accuse foster parents of aggressive parenting doesn't fairly encompass a scheme or plan to falsely accuse a parent of sexual assault. When applying the federal version of Rule 404(b), for example, we have sometimes held that a criminal defendant's prior drug offenses were not sufficiently similar to show that the defendant engaged in the charged drug offense. *See United States v. Haywood*, 280 F.3d 715, 721-23 (6th Cir. 2002); *see also United States v. Sadrinia*, 134 F.4th 887, 893-94 (6th Cir. 2025).

What's more, consider A.H.'s supposed motive to lie. Chandler argued that A.H. had a motive to falsely accuse him of sexual assault because she wanted to leave his custody and return to her birth parents. *Chandler*, 137 F.4th at 541. But the panel refuses to

acknowledge a fact that casts serious doubt on that theory: by the time of Chandler's trial, A.H. had been living with a new foster family for *five years* but hadn't made any accusations of wrongdoing against them even after they adopted her. Chandler's counsel acknowledged as much when he conceded that, "in the last five years," A.H. had been living in a new foster home and was "doing fine." R. 9-5, Pg. ID 347. And that family actually adopted A.H. Did A.H. make accusations against them to stop them from adopting her? No. If A.H. originally had a motive to falsely accuse her foster parents of crimes so that she could go back to her birth parents, that motive had evaporated by the time she testified about Chandler's sexual abuse at trial.

The panel doesn't mention that A.H. had been living with a new family for almost five years without incident. Instead, the panel omitted that fact. At Chandler's trial, the prosecutor asserted the following: "Where is [A.H.]? She's in a home that doesn't include her birth parents for five years. Is there any evidence that there's been any problems with her false allegations? Nonsense." R. 9-6, Pg. ID 399. The amended panel opinion reproduces a block-quote of this part of the prosecutor's closing argument but uses an ellipsis to cut out this statement. *Compare* R. 9-6, Pg. ID 399 *with Chandler*, 137 F.4th at 541. Thus, the opinion glides over this critical fact that casts doubt on A.H.'s supposed motive to lie. What's more, the amended opinion's use of an ellipsis distorts the meaning of the prosecutor's statement. With the ellipsis inserted, the opinion uses this quote to support its argument that there wasn't any evidence of A.H.'s false allegations *introduced at trial*. Yet the prosecutor was saying that

there wasn't any evidence that A.H. had made false allegations *during the five years that she had been living in a new adoptive home*.

In sum, Chandler's evidence doesn't show that A.H. followed a scheme of alleging sexual abuse or that she had a motive to falsely accuse him of that abuse at trial. In interpreting analogous federal rules, this court has held that a trial court may exclude "other acts" evidence that has only a remote bearing on a witness's motive to lie. *See United States v. Phillips*, 888 F.2d 38, 41-42 (6th Cir. 1989). It wouldn't have been constitutionally unreasonable for the Michigan trial court to exclude the Hamblins' testimony under the same Rule 404(b) analysis that we have adopted.

Second, the trial court could have rejected the evidence's admissibility under Rule 404(b) on the ground that Chandler hadn't shown that A.H.'s prior accusations against the Hamblins were false. Although A.H. testified that it was "possible" that the Hamblins' dog hadn't actually attacked her, she testified that her other allegations against the Hamblins were true. R. 9-4, Pg. ID 321. And notably, even the Hamblins agree that one of A.H.'s accusations against them was true: A.H.'s accusation that Randy Hamblin punished her by putting soap in her mouth. In fact, the Hamblins admitted that after state authorities launched an investigation into their parenting, the authorities placed the Hamblins on a central registry for child abuse and barred the Hamblins from ever adopting a child again. If the trial court had found that Chandler failed to present enough evidence that A.H.'s accusations against the Hamblins were false, then those accusations couldn't have shown that A.H. had a scheme or motive

to fabricate a sexual abuse accusation against Chandler–making them inadmissible under Rule 404(b).

Indeed, one of our sister circuits has denied habeas relief on precisely this ground. *See Cookson v. Schwartz*, 556 F.3d 647, 654-55 (7th Cir. 2009). In *Cookson*, the defendant filed a federal habeas petition after an Illinois court convicted him of child sexual abuse. *Id.* at 648. Cookson claimed that the trial court violated his Confrontation Clause rights by preventing him from questioning the victim about another (allegedly false) accusation that the victim had made against her biological father. *Id.* at 648-49, 652. Just like Chandler, Cookson argued that evidence of the victim's prior false accusation was essential to his defense because it showed that the victim had a plan to falsely accuse the adults in her life to get what she wanted. *Id.* at 653.

The Seventh Circuit denied habeas relief. *Id.* at 655. The court explained that the state trial court didn't act contrary to clearly established federal law by preventing Cookson from introducing evidence about the prior accusation, since Cookson hadn't shown that the victim's prior accusation against her biological father was false. *Id.* at 654. *Cookson* held as much even though a state child services agency had concluded that the victim's prior accusation was "unfounded." *Id.* at 655. The state agency's conclusion that the prior accusation was "unfounded" simply meant that there wasn't enough evidence to corroborate the truth of the accusation. *Id.* The "unfounded" determination didn't demonstrate, by itself, that the accusation was *false*. *Id.*

Cookson's persuasive logic applies to this case. Like the defendant in *Cookson*, Chandler hasn't shown that A.H.'s accusations against the Hamblins were false. To be sure, the Hamblins claimed that state investigators had dismissed, for lack of evidence, A.H.'s accusations about the clothes, dog attack, and wooden spoon. But, as *Cookson* explains, a state agency's dismissal for lack of evidence doesn't show that an accusation is false. Regarding the clothes, wooden spoon, and hair-pulling allegations, the only evidence is the Hamblins' own denial. But, as *Cookson* explained, the trial court would have acted within its discretion to conclude that "a self-serving denial by the accused should be accorded little weight." *Id*. What's more, the trial court could reasonably have doubted the Hamblins' credibility. Why? Because the Hamblins might have been motivated by a desire to get revenge on A.H. for revealing the soap punishment that caused state authorities to place the Hamblins on a child abuse registry. At the least, the court could have reasonably found that the probative value of this evidence did not outweigh its prejudicial nature because it might have "confuse[d] the jury" and "unduly prolong[ed] the trial" by shifting the trial's focus to the veracity of A.H.'s claims against the Hamblins rather than the veracity of her claims against Chandler. *Jackson*, 569 U.S. at 511.

(One final point: the Michigan Court of Appeals correctly found that Chandler didn't suffer prejudice from the exclusion of the Hamblins' testimony. Imagine if one of the Hamblins had testified. Cross would have looked something like this: Q: In fact, A.H.'s allegation about you putting soap in her mouth was true? A: Yes. Q: And while you contest the remainder of her

abuse allegations, CPS did investigate you for child abuse? A: Yes. Q: As a result of that investigation, the authorities placed you on a central registry for child abuse and barred you from adopting a child again? A: Yes.)

Ultimately, the panel should have followed the Seventh Circuit and held that the Michigan trial court's exclusion of the Hamblins' testimony was reasonable under valid state rules of evidence. That fact would, in turn, have shown that the exclusion furthered Michigan's "legitimate interests" in these state rules. *Holmes*, 547 U.S. at 325; *see Scheffer*, 523 U.S. at 309-10.

b.

Likewise, fairminded jurists could conclude that Michigan had a valid interest in excluding the testimony of Chandler's expert, Jeff Kieliszewski. Michigan law required Chandler to identify Kieliszewski as an expert within 28 days of trial. Mich. Ct. R. 6.201(A)(1). It's undisputed that Chandler failed to comply with that requirement. *See Chandler*, 2017 WL 6502801, at *3.

The court appointed Chandler's counsel on April 10, 2015. He didn't request any type of expert for two months. Then, three days after the expert disclosure deadline, he requested the funds to hire an expert. The court immediately approved his request. Even then, Chandler failed to disclose the expert "until the day of trial." *Chandler*, 137 F.4th at 532 n.5.

The trial court excluded Chandler's expert witness because of the disclosure violation. Of course, disclosure deadlines are constitutionally valid. *Jackson*, 569 U.S. at 510. Indeed, enforcing disclosure deadlines is routine practice, not something out of the ordinary. As the Court has put it, an adversary trial is not like a "poker game" where players can "conceal their cards until played." *Williams v. Florida*, 399 U.S. 78, 82 (1970). Pretrial disclosure requirements prevent "surprise[s]" at trial and "enhance[] the fairness of the adversary system." *Michigan v. Lucas*, 500 U.S. 145, 150-51 (1991) (citation omitted). Or, as the trial court pointed out in this case, "[i]f you comply with the court rules, . . . your expert may testify, but you haven't even complied. . . . I've ruled the same with the prosecutor." R. 9-3, Pg. ID 258.

To be sure, the Michigan Court of Appeals held that, as a matter of state law, excluding Chandler's expert witness from testifying was too harsh of a sanction for Chandler's disclosure violation. *Chandler*, 2017 WL 6502801, at *3. But that fact is irrelevant to the federal constitutional analysis. Even if excluding Chandler's expert witness pursuant to a valid notice requirement violated *state law*, this violation does not eliminate the state interest that the noticebased exclusion served as a matter of *federal constitutional law*. *Jackson*, 569 U.S. at 510.

Finally, consider the troubling implications of the panel's contrary holding. Imagine if the Michigan Court of Appeals had simply upheld the trial court's exclusion on timeliness grounds. We wouldn't be here today. After all, the Supreme Court has already held that no caselaw prevents states from enforcing state-

law notice requirements. *Id.* at 509. But instead of demanding strict compliance with Michigan's witness-disclosure rules (and thereby insulating itself from federal habeas review), the Michigan Court of Appeals decided to give Chandler a break by excusing his non-compliance. And how does the panel respond? By seizing on that leniency as the basis for its grant of habeas relief. In the panel's view, by giving Chandler *more* protection under state law than the Supreme Court's caselaw currently requires, the Michigan courts have exposed themselves to a federal constitutional violation. That is an astonishing inversion of AEDPA's demand for deference.

2.

Turn to Chandler's "interest" in admitting the testimony of the Hamblins and Kieliszewski. *Scheffer*, 523 U.S. at 309. For two reasons, the Michigan appellate court could reasonably conclude that this testimony did not qualify as evidence "central to the defendant's claim of innocence." *Crane*, 476 U.S. at 690.

First, this case is not like *Washington*, *Chambers*, *Rock*, and *Holmes* because the excluded testimony in those cases concerned "factual evidence" about the *charged* crimes. *Scheffer*, 523 U.S. at 317. Take *Holmes*. There, the state court did not allow the defendant to introduce evidence that another man had committed the murder. 547 U.S. at 323. Or take *Washington*. There, the state court did not allow the defendant to introduce testimony that he had tried to stop the murder. 388 U.S. at 16-17. Chandler wasn't deprived of the opportunity to introduce similar evidence–namely, evidence about the charged sexual

abuse. A.H. testified and was cross-examined about Chandler's alleged abuse. The court thus didn't prevent a witness who had "personally observed" the facts from testifying. *See id.* at 23. The court also didn't prohibit Chandler from testifying himself or from admitting a confession from A.H. that she fabricated the allegations. *See Chambers*, 410 U.S. at 302.

The Michigan appellate court could instead reasonably find that Chandler's proposed testimony was like the defense evidence in *Scheffer*. There, the Court held that a defendant's polygraph evidence did not "implicate any significant interest of the accused" because it did not concern *factual evidence* about the charged offense. 523 U.S. at 316-17 & n.13. Rather, the defense sought to use the polygraph evidence merely to "bolster [the defendant's] own credibility." *Id.* at 317. The state court could reasonably believe that *Scheffer*'s logic applies here. None of the excluded witnesses would've testified "*about* the alleged crime at hand": Chandler's alleged abuse of A.H. *Id.* at 317 n.13 (emphasis added). Rather, Chandler wanted them to testify about prior allegations made by A.H. He sought to show that, by lying to avoid adoption in the past, A.H. had a "motive," "plan," or "scheme" to "manipulat[e] the foster care system." R. 9-3, Pg. ID 257. But these witnesses would have been admitted as evidence of an "*other* crime, wrong, or act." Mich. R. Evid. 404(b)(1) (emphasis added). By falling within Rule 404, the evidence concerned other events, not the abuse at issue. Likewise, Chandler's expert would have testified about the scientific processes of childhood memory development, not what Chandler did or didn't do. So just as the defendant in *Scheffer* sought

to use a polygraph expert to bolster his credibility, Chandler sought to use his expert to undermine A.H.'s credibility.

Nor could Chandler rely on *Crane* in this AEDPA context. Admittedly, *Crane* did not concern evidence about the crime itself; rather, it concerned evidence about the conditions under which the defendant had confessed to that crime. The defendant sought to introduce this evidence to undermine the "credibility" of that confession. 476 U.S. at 685-87. So that fact might put *Crane* in some tension with *Scheffer*. Still, the state court would not have acted unreasonably by concluding that Chandler's case was closer to *Scheffer* than *Crane*. The state courts in *Crane* had not offered "any rational justification" for the exclusion. *Id.* at 690-91. Here, by contrast, the trial court relied on rational (if mistaken) state-law grounds tied to unchallenged state-law rules.

Second, the Michigan Court of Appeals could have reasonably concluded that the "repetitive" nature of Chandler's evidence showed that it was not "central" to his defense. *Id.* at 689-90 (citation omitted). Chandler must show that he had a "weighty" interest in the evidence's admission. *Holmes*, 547 U.S. at 324 (citation omitted); *see Reynolds*, 86 F.4th at 351. Even outside AEDPA, defendants in our court cannot meet this requirement unless they show that the omitted evidence "would have created a reasonable doubt" about their guilt that did not already exist. *Reynolds*, 86 F.4th at 351 (citation modified). State courts thus retain "wide latitude" to exclude mere "repetitive" or "marginally relevant" evidence without implicating

the constitutional right to present a complete defense. *Crane*, 476 U.S. at 689 (citation omitted). The state appellate court could have reasonably found that Chandler's evidence fit this bill.

Start with Kieliszewski's testimony. This expert would have discussed "confabulation" (when a child "fill[s] in the blanks" with fake memories) and memory degradation over time. R. 9-9, Pg. ID 441-43. And he would have talked about "best practice[s]" for forensic interviews to support Chandler's argument that the caseworker violated those practices by failing to videotape A.H.'s interview and allowing her adoptive mother to sit in on it. *Id*. But these points came out during trial. The prosecution's expert acknowledged that memories degrade over time and that sometimes children come to believe lies as actual memories. The CPS investigator who conducts forensic interviews testified about best practices and conceded on cross that she does not recommend having support persons present during interviews. And the case detective acknowledged that A.H.'s adoptive mother was present during A.H.'s forensic interview despite these best practices.

Next, recall that the Hamblins would have testified generally about A.H.'s untruthfulness and the accusations she made against them. But again, Chandler cross-examined A.H. about these statements. She admitted it was "possible" that she lied about the Hamblins' dog attacking her. R. 9-4, Pg. ID 321. And although she said it was true that the Hamblins put soap in her mouth, she confirmed that it happened "right after" they told her that they wanted to adopt her. *Id*. A.H.'s caseworker also testified that she "was

aware that [A.H.] had made prior allegations of physical abuse, not of sexual abuse." *Id.* at Pg. ID 333. Finally, Chandler's wife testified that social workers told her to "watch" A.H because "she had made allegations" about former foster parents. R. 9-5, Pg. ID 382. And she testified that A.H. told her about Chandler's misconduct a few days after they told her about their plans to adopt her.

In sum, the Michigan appellate court's decision was not "so obviously wrong that its error lies 'beyond any possibility for fairminded disagreement.'" *Shinn*, 592 U.S. at 118 (citation omitted). AEDPA thus precludes relief.

D.

The panel's contrary holding violated a host of AEDPA rules. *First*, the Supreme Court has told us that, when applying a "general" rule, state courts enjoy "more leeway . . . in reaching outcomes in case-by-case determinations." *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004). That is because reasonable jurists are more likely to disagree over how to apply principles stated at a high level of generality. That concern is especially true where, as here, one of the cornerstone precedents limited its holding to "the facts and circumstances of [that] case." *Chambers*, 410 U.S. at 303. Thus, even if the line of cases starting with *Washington* and *Chambers* established a general right to present a complete defense, fairminded jurists could disagree over how that right applies in the many factual contexts in which it might arise. This is one of those contexts in which fairminded jurists could do so.

Second, the panel relied on legal principles that were not "clearly established" by "Supreme Court" precedent. 28 U.S.C. § 2254(d)(1). For example, it simply concluded–by *ipse dixit*–that the Court's balancing test for determining the constitutionality of a "state rule" of evidence also applies to determine the constitutionality of the exclusion of evidence under an otherwise "valid" rule that a court "misapplied" on the facts of a case. *Chandler*, 137 F.4th at 540. The panel's only support for this significant jump was a "*Cf.*" citation to *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990). *See id.* But *Lewis* addressed a capital defendant's Eighth Amendment challenge to an aggravating circumstance. *See* 497 U.S. at 780. That far-afield case clearly establishes the legal principles that should govern the exclusion of evidence here? AEDPA is not supposed to work this way.

Similarly, the panel asserted that the reasons underlying the valid state rules at issue in this case could not constitutionally "justif[y]" the state trial court's exclusion of evidence under those rules because of the state appellate court's conclusion that the trial court had violated the state rules. *Chandler*, 137 F.4th at 542-43. Here again, no clearly established Supreme Court precedent supports this rule. Indeed, if the Constitution barred any reliance on state evidentiary rules when a court erroneously excludes evidence under those rules, does that mean that *all* evidentiary errors violate the Constitution? No Supreme Court precedent would compel that conclusion. If anything, the Court's precedent cuts the other way. The Court has repeatedly held that violations of state law do not automatically establish constitutional violations. *See*

Estelle v. McGuire, 502 U.S. 62, 67-68, 71-72 (1991); *see also Gilmore v. Taylor*, 508 U.S. 333, 344 (1993). At the least, it is debatable whether the reasons supporting a state evidentiary rule can help justify a state court's mistaken reliance on that rule in defense of a federal constitutional challenge.

Third, and finally, the panel relied on one of our *own* precedents to show that the Michigan appellate court violated clearly established law. *See Chandler*, 137 F.4th at 539 (citing *Ferensic v. Birkett*, 501 F.3d 469 (6th Cir. 2007)). It's true that *Ferensic* applied AEDPA and thus amounts to precedent on what law has been "clearly established" by the Supreme Court. *See Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (per curiam); *see Ferensic*, 501 F.3d at 472. Still, we issued that decision in 2007–years before the Court's recent decisions clarifying AEDPA's demanding nature. *See, e.g.*, *Brown v. Davenport*, 596 U.S. 118, 135-37 (2022); *Shinn*, 592 U.S. at 118-24. Consider, for example, that the state court in *Ferensic* had excluded an expert because the defendant violated a state-law rule requiring disclosure of the expert's report ahead of trial. *See* 501 F.3d at 471. We held that the exclusion of this expert violated clearly established law requiring a "proportionality-based" review. *Id.* at 476. But the Supreme Court has held that none of its cases mandate the "case-by-case balancing" that *Ferensic* demanded. *Jackson*, 569 U.S. at 510. "Perhaps the logical next step from" the Supreme Court's existing precedent will be to extend this type of balancing to misapplications of lawful state rules, "but 'perhaps not.'" *Virginia v. LeBlanc*, 582 U.S. 91, 95 (2017) (per curiam) (citation omitted). And this debate "cannot be resolved on

federal habeas review." *Id.* To the extent *Ferensic* found clearly established law when there was none, then, that is even more reason why we should've taken this case en banc. *Cf. Fields*, 86 F.4th at 238-39.

III.

This case warranted en banc review. The panel ignored AEDPA's strictures and granted habeas relief absent clearly established Supreme Court law. *See* Fed. R. App. P. 40(b)(2)(B).

And this case presents questions of "exceptional importance." Fed. R. App. P. 40(b)(2)(D). Federal review of state convictions intrudes on state sovereignty, denies a state's right to punish convicted criminals, and frustrates a state's interest in repose. *See Harrington*, 562 U.S. at 103. It also imposes "profound societal costs." *Calderon v. Thompson*, 523 U.S. 538, 554 (1998) (citation omitted). Indeed, a retrial in this case would likely require four witnesses, including A.H. and two of Chandler's relatives, to testify a second time about Chandler's sexual abuse. *See Shoop v. Cunningham*, 143 S. Ct. 37, 44 (2022) (Thomas, J., dissenting from denial of certiorari) (admonishing as "an injustice" our court's "profound disrespect, not merely to the State, but to citizens who perform the difficult duty of serving on . . . juries" and "to the surviving victims of [the defendant's] atrocious crimes"). Therefore, AEDPA demands that we review state-court convictions only for "extreme malfunctions" in the state justice system. *Harrington*, 562 U.S. at 102 (citation omitted). The panel disobeyed that command.

We respectfully dissent from the denial of rehearing en banc.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens
Kelly L. Stephens, Clerk

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)
File Name: 25a0122p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOUIS CHANDLER,

Petitioner-Appellant,

v. — No. 23-1270

MIKE BROWN, Warden,

Respondent-Appellee.

On Petition for Rehearing En Banc
United States District Court for the Western District of Michigan at Marquette.
No. 2:19-cv-00263—Paul Lewis Maloney, District Judge.

Decided and Filed: May 9, 2025

Before: SUTTON, Chief Judge; MOORE, CLAY, GRIFFIN, KETHLEDGE, WHITE, STRANCH, THAPAR, BUSH, LARSEN, NALBANDIAN, READLER, MURPHY, DAVIS, MATHIS, BLOOMEKATZ, and RITZ, Circuit Judges.[*]

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[*] Judge White was not eligible to participate in the vote on whether to grant the petition for rehearing en banc, *see* 6 Cir. I.O.P. 40(f), but was eligible to participate in deliberations after the Court granted en banc review, *see* 6 Cir. I.O.P. 40(g).

COUNSEL

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ORDER

A majority of the Judges of this Court in regular active service has voted for rehearing en banc of this case. Sixth Circuit Rule 40(d) provides as follows:

> A decision to grant rehearing en banc vacates the previous opinion and judgment of the court, stays the mandate, and restores the case on the docket as a pending appeal.

Separately, a majority of the en banc Court has voted to return the case to the original panel for entry of an amended opinion.

ACCORDINGLY, it is ORDERED that the previous decision and judgment of this Court are vacated, the mandate is stayed, and this case is restored to the docket as a pending appeal.

It is further ORDERED that the case be referred to the original panel for entry of an amended opinion that will issue forthwith.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk