

No. ____

IN THE
Supreme Court of the United States

SCOTT ALLEN DEBRUYN,
Petitioner,

v.

ADAM DOUGLAS, WARDEN
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Daniel S. Harawa
Counsel of Record
NEW YORK UNIVERSITY
SCHOOL OF LAW
FEDERAL APPELLATE CLINIC
245 Sullivan Street
Fifth Floor
New York, NY 10012
daniel.harawa@nyu.edu
(212) 998-6420

Counsel for Petitioner

QUESTION PRESENTED

This Court has announced two competing interpretations of the level of specificity at which it must articulate a principle in order for it to be “clearly established Federal law” under 28 U.S.C. § 2254(d)(1), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). In *Andrew v. White*, this Court held that “[g]eneral legal principles *can* constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court.” 604 U.S. 86, 94 (2025) (emphasis added). Yet in *Brown v. Davenport*, this Court said that “holdings that speak only at a high level of generality” *cannot* clearly establish federal law. 596 U.S. 118, 136 (2022). This lack of clear guidance regarding when general legal principles constitute clearly established federal law has sowed confusion in the lower courts.

The question is:

For the purposes of adjudicating a state prisoner’s petition for federal habeas relief, at what level of specificity must this Court define a legal principle in order for it to constitute “clearly established Federal law” under 28 U.S.C. § 2254(d)(1)?

PARTIES TO THE PROCEEDING

Petitioner is Scott Allen DeBruyn. Respondents are Adam Douglas, Warden of Saginaw Correctional Facility, and Diana Nessel, Attorney General of Michigan.

RELATED PROCEEDINGS

People v. DeBruyn, No. 352274, 2022 WL 981281 (Mich. Ct. App. Mar. 31, 2022) (per curiam)

People v. DeBruyn, 978 N.W.2d 836 (Mich. 2022) (mem.)

DeBruyn v. Douglas, No. 23-10219, 2024 WL 3236306 (E.D. Mich. June 28, 2024)

DeBruyn v. Douglas, 168 F.4th 913 (6th Cir. 2026)

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
RELATED PROCEEDINGS.....	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW.....	1
JURISDICTIONAL STATEMENT	1
RELEVANT STATUTORY PROVISION.....	2
INTRODUCTION	3
STATEMENT OF THE CASE.....	6
REASONS FOR GRANTING THE WRIT.....	12
I. The Courts of Appeals have been long divided over the level of specificity required to clearly establish federal law under AEDPA.	13
A. Three circuit courts hold that general principles do not constitute clearly established law.....	15
B. Three jurisdictions hold—in line with <i>Andrew</i> —that general legal principles articulated by this Court can constitute clearly established federal law.....	20
II. The question is enormously consequential.....	24
III. The Sixth Circuit’s decision is wrong.	27

CONCLUSION	34
APPENDIX A, Amended Opinion of the United States Court of Appeals for the Sixth Circuit, Filed March 5, 2026	1a
APPENDIX B, Amended Judgment of the United States Court of Appeals for the Sixth Circuit, Filed March 5, 2026	34a
APPENDIX C, Opinion and Order of the United States District Court for the Eastern District of Michigan, Southern Division, Filed June 28, 2024	36a
APPENDIX D, Denial of Rehearing En Banc of the United States Court of Appeals for the Sixth Cir- cuit, Filed May 4, 2026	70a

TABLE OF AUTHORITIES

Cases

<i>Alvarez v. Guerrero</i> , 162 F.4th 570 (5th Cir. 2025)	18, 19
<i>Andrew v. White</i> , 604 U.S. 86 (2025).....	
.....4, 11, 12, 14, 16, 18, 20, 21, 24, 25, 32, 33	
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000).....	22, 23
<i>Bieganski v. Shinn</i> , 149 F.4th 1055 (9th Cir. 2025)	21
<i>Brown v. Davenport</i> , 596 U.S. 118 (2022).....	12, 14, 16, 17
<i>Burrage v. United States</i> , 571 U.S. 204 (2014).....	3, 33
<i>Caldwell v. Mississippi</i> , 472 U.S. 320 (1985).....	17
<i>Carey v. Musladin</i> , 549 U.S. 70 (2006) (Kennedy, J., concurring in judgment)	14
<i>Duhaime v. Ducharme</i> , 200 F.3d 597 (9th Cir. 2000).....	13
<i>Fernandez v. United States</i> , 608 U.S. 411 (2026).....	33

<i>Garrus v. Sec’y of Penn. Dep’t of Corr.</i> , 694 F.3d 394 (3d Cir. 2012)	21, 22
<i>Greene v. Palakovich</i> , 606 F.3d 85 (3d Cir. 2010)	13
<i>Gregg v. Rockview</i> , 596 F. App’x 72 (3d Cir. 2015)	22, 23
<i>Harrington v. Richter</i> , 562 U.S. 88 (2011) 4, 6, 9, 10, 11, 16, 25, 26, 28, 31	
<i>Hinton v. Alabama</i> , 571 U.S. 263 (2014) 4, 5, 6, 11, 16, 28, 29, 30, 31	
<i>Holberg v. Guerrero</i> , 130 F.4th 493, <i>rev’d en banc</i> , ____ F.4th ____, No. 21-70010, 2026 WL 2364671 (5th Cir. 2025) (mem)	19
<i>Holloway v. Arkansas</i> , 435 U.S. 475 (1978)	19
<i>Karacson v. Shaver</i> , 176 F.4th 525 (6th Cir. 2026)	17
<i>Larson v. Stucker</i> , No. 25-1233, 2026 WL 861682 (10th Cir. Mar. 30, 2026)	18
<i>Lefkowitz v. Newsome</i> , 420 U.S. 283 (1975) (Powell, J., dissenting)	33
<i>Lockyer v. Andrade</i> , 538 U.S. 63 (2003)	14

<i>Lopez v. Smith</i> , 574 U.S. 1 (2014) (per curiam)	14
<i>MacFarlane v. Walter</i> , 179 F.3d 1131 (9th Cir. 1999).....	13
<i>Marcum v. Luebbers</i> , 509 F.3d 489 (8th Cir. 2007).....	23
<i>Martinez v. Quick</i> , 134 F.4th 1046 (10th Cir. 2025)	17, 18
<i>Matteo v. Superintendent, SCI Albion</i> , 171 F.3d 877 (3d Cir. 1999) (en banc) (McKee, J., concurring)	13
<i>Nevada v. Jackson</i> , 569 U.S. 505 (2013) (per curiam)	14
<i>Panetti v. Quarterman</i> , 551 U.S. 930 (2007).....	14, 20, 22, 23
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	32
<i>Preiser v. Rodriguez</i> , 411 U.S. 475 (1973).....	33
<i>Sanders v. Plappert</i> , 168 F.4th 837 (6th Cir. 2026)	17
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995).....	33
<i>Storey v. Roper</i> , 603 F.3d 507 (8th Cir. 2010).....	23, 24

<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	23
<i>Taylor v. Riojas</i> , 592 U.S. 7, 9 (2020).....	11
<i>White v. Woodall</i> , 572 U.S. 415 (2014).....	14
<i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976).....	17
<i>Wright v. Van Patten</i> , 552 U.S. 120 (2008).....	15
<i>Yarborough v. Alvarado</i> , 541 U.S. 652 (2004).....	15, 20, 25
Statutes	
28 U.S.C. § 2254(d).....	2, 6, 12, 13, 24, 34

PETITION FOR A WRIT OF CERTIORARI

Petitioner Scott Allen DeBruyn respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The decision of the court of appeal is reported at 168 F.4th 913, and reprinted in the Appendix to the Petition (“App.”) at App. 1a-33a. The Sixth Circuit’s order denying rehearing en banc, App. 70a-71a, is unpublished but is available at 2026 WL 1642434. The opinion of the district court, App. 36a-69a, is unpublished but is available at 2024 WL 3236306.

The opinion of the Michigan Court of Appeals is unreported but is available at 2022 WL 981281.

JURISDICTIONAL STATEMENT

The Sixth Circuit’s amended opinion denying habeas relief was issued on March 5, 2026. App. 1a-33a. On May 4, 2026, the Sixth Circuit denied a timely petition for rehearing en banc. App. 70a-71a. On July 23, 2026, this Court extended the time to file a petition for a writ of certiorari to September 17, 2026. *See* No. 26-A-108. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

28 U.S.C. § 2254(d) provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States

INTRODUCTION

Petitioner Scott Allen DeBruyn was sentenced to up to thirty years in prison for giving Percocet pills to his friend Camille Gesiakowski, because Michigan claimed that the pills that he allegedly gave her were a “substantial factor” in her overdose. App. 5a-6a.

But as Justice Scalia once observed, one of “the distinctive problems associated with drug overdoses” is the unfortunate fact that “[a]ddicts often take drugs in combination.” *Burrage v. United States*, 571 U.S. 204, 214 (2014). As such, many “overdose deaths involve[] more than one drug.” *Id.*

So was true here. At the time of her death, Ms. Gesiakowski had multiple substances in her system, and the official cause of death was mixed-drug overdose. App. 6a, 40a. Thus, Michigan’s entire case hinged on its ability to isolate Percocet, which contains oxycodone, as a substantial factor in her death and to prove that causal connection beyond a reasonable doubt. *See* App. 66a.

Michigan understood that it could prove its case only through the use of experts. It therefore called *four* experts to testify at trial. *See* App. 40a.

Mr. DeBruyn’s counsel called none. App. 53a-54a. They knew their client faced life in prison, and they conceded at a post-conviction hearing that they knew they needed to consult with an independent toxicologist. *See* App. 8a. Yet counsel did not consult with

said expert, and thus did not present any rebuttal expert evidence. *See* App. 53a-54a. Instead, trial counsel pursued a cross-examination strategy, attempting to poke holes in the State’s experts’ conclusions to suggest alternate causes of death. *See id.*

In the courts below, Mr. DeBruyn argued that his counsel were ineffective for failing to consult with or call an appropriate expert in support of this strategy. *See* App. 8a-10a; 17a-18a. His argument went as follows: This Court has held that “[c]riminal cases will arise where the *only* reasonable and available defense strategy requires consultation with experts or introduction of expert evidence.” *Harrington v. Richter*, 562 U.S. 88, 106 (2011) (emphasis added); *see* App. 17a-18a; 23a-24a. This Court then applied that principle in a case where the “core of the prosecution’s case was the state experts’ conclusion” *Hinton v. Alabama*, 571 U.S. 263, 273 (2014). And as this Court explained there, “effectively rebutting that case required a competent expert on the defense side.” *Id.*; Petition for Rehearing En Banc at 9-10, *DeBruyn v. Douglas*, No. 24-1905 (6th Cir. May 4, 2026); *see* App. 26a-27a.

Mr. DeBruyn accordingly argued that *Harrington* and *Hinton* apply with “obvious clarity” given that Michigan’s entire case turned on its experts’ interpretation of complex medical evidence, and the defense strategy was to challenge those State’s experts’ conclusions. *Andrew v. White*, 604 U.S. 86 (2025); Petition for Rehearing En Banc at 1, *DeBruyn*, 2026 WL

1642434 (No. 24-1905). He explained that if ever there were a case where an expert was required, “[t]his was such a case.” *Hinton*, 571 U.S. at 273; Petition for Rehearing En Banc at 3, *DeBruyn*, 2026 WL 1642434 (No. 24-1905).

Had trial counsel consulted and called an appropriate expert, the case would have looked far different. Two defense experts testified at Mr. DeBruyn's postconviction hearing, and both agreed on two conclusions that—if true—would have been fatal to the State's case. *See* App. 41a, 46a. First, oxycodone was unlikely to have been a substantial factor in Ms. Gesiakowski's death. *See* App. 46a; 55a-57a. Second, given the levels of the various substances in her system, even if oxycodone had been a substantial factor, it was scientifically impossible for that oxycodone to have come from the Percocet pills Michigan alleged Mr. DeBruyn gave her. *See* App. 46a-47a.

Despite this exonerative evidence, the Michigan Court of Appeals held that trial counsel were not ineffective for failing to consult or call appropriate experts. App. 53a-55a. And the Sixth Circuit held that this decision was owed deference under AEDPA. App. 19a.

The Sixth Circuit rejected Mr. DeBruyn's argument that the Michigan Court of Appeals' decision was contrary to *Harrington* and *Hinton*, which recognize that in certain criminal cases, “the only reasonable . . . defense strategy requires consultation with

experts or the introduction of expert evidence.” *Harrington*, 562 U.S. at 106; *Hinton*, 571 U.S. at 273; App. 15a-18a. The court below held that this legal principle was not articulated at the “appropriate level of specificity” to constitute “clearly established Federal law” under 28 U.S.C. § 2254(d)(1). App. 14a.

This case therefore presents the question that has long vexed the lower courts: At what level of specificity must this Court articulate a legal principle for it to constitute “clearly established Federal law”?

STATEMENT OF THE CASE

Scott Allen DeBruyn was convicted of delivering a controlled substance, oxycodone, to his friend Camille Gesiakowski, causing her death. App. 1a. Michigan’s theory of prosecution was that Mr. DeBruyn bought Percocet pills for his friend, and that those pills were a “substantial factor” in her death from a “mixed-drug overdose.” *See* App. 4a-6a.

At the time of her death, the toxicology report revealed that Ms. Gesiakowski had four substances in her system: (1) oxycodone, (2) tramadol, (3) fluoxetine, and (4) difluroethane. App. 6a-7a. Thus, to convict Mr. DeBruyn of delivering a controlled substance causing death, the State was required to prove two things beyond a reasonable doubt: One, Mr. DeBruyn gave Ms. Gesiakowski oxycodone; and two, the oxycodone was a “substantial factor” in her death.” App. 5a-6a.

Michigan presented *four* experts at trial to prove that oxycodone was a substantial factor in Ms.

Gesiakowski's overdose, while defense counsel presented no experts in rebuttal. *See App. 40a, 53a-54a.* Trial counsel did not even consult or retain an independent toxicologist despite the fact that this case rose and fell on the correct interpretation of Ms. Gesiakowski's toxicology report. *See App. 53a-54a.*

Defense counsel instead countered Michigan's theory that the oxycodone was a substantial factor in Ms. Gesiakowski's death by cross-examining the State's experts in an attempt to undermine their conclusions, and then arguing to the jury that Ms. Gesiakowski could have died from a cause unrelated to oxycodone. *See App. 7a.* Having only the testimony of the State's four expert witnesses to consider regarding Ms. Gesiakowski's cause of death, however, the jury unsurprisingly convicted Mr. DeBruyn, and the judge sentenced him to 198 to 360 months' imprisonment. *App. 8a.*

Even though defense counsel's strategy was to call into question the State's experts' conclusions, trial counsel failed to consult with (let alone call) an appropriate expert. *See App. 53a-54a.* Defense counsel understood that they needed to speak with a toxicologist, testifying at the post-conviction hearing that they specifically sought one out. But they abandoned their search after speaking to a pathologist and one of the State's toxicologists. *See App. 54a.* This investigation was inadequate: The State's own pathologist acknowledged that interpreting complex toxicology reports was outside the "area of expertise" of a

pathologist. Brief for Appellant at 32, *DeBruyn v. Douglas*, 168 F.4th 913 (6th Cir. 2026) (No. 24-1905) (citing post-conviction hearing testimony). And defense counsel understood that they needed an *independent* toxicologist to test the State’s toxicologist’s theory. In a case that turned on the correct reading of a toxicology report, Mr. DeBruyn’s trial counsel never consulted the independent toxicologist that they knew they needed. And without an adequate investigation, counsel could not make an informed decision about which defense strategy to pursue.

Mr. DeBruyn appealed his conviction, and the Michigan Court of Appeals granted his request for a remand for an evidentiary hearing on his ineffective-assistance-of-counsel claim. App. 8a.

At this hearing, post-conviction counsel called two experts: a toxicologist and an addiction psychiatrist. Brief for Appellant at 7, *DeBruyn v. Douglas*, 168 F.4th 913 (6th Cir. 2026) (No. 24-1905). Both experts testified that it was scientifically “impossible” for the oxycodone in Ms. Gesiakowski’s system to have come from Percocet as the State claimed. *See id.* at 18. As they explained, given the amount of oxycodone in Ms. Gesiakowski’s system at the time of her death, if the source of the oxycodone had been Percocet, one would also expect to see acetaminophen in her blood given the relative level of both substances contained in a Percocet pill; yet there was none. *Id.*; *see* App. 46a.

Based on their reading of Ms. Gesiakowski's toxicology report, these experts also testified to several alternative causes of death, none of which would have involved oxycodone: (1) serotonin syndrome resulting from the interaction of tramadol and fluoxetine, (2) cardiac arrhythmia or sudden death caused by difluorethane inhalation, and (3) fatal seizure following the abrupt cessation of seizure medication. *See* App. 56a. The experts explained that each of these theories were not only plausible—they were *more* consistent with the trial evidence than the State's theory of the case. Brief for Appellant at 46, *DeBruyn v. Douglas*, 168 F.4th 913 (6th Cir. 2026) (No. 24-1905)

The Michigan Court of Appeals rejected Mr. DeBruyn's ineffective assistance claim. App. 8a-9a. Under the reasoning that "[c]ounsel may decide not to call an expert for strategic reasons, such as when cross-examination is determined to provide a sufficient means to expose defects in the opinions of the prosecution's experts," the court held that counsel's decision to forgo expert evidence in favor of cross-examination was a reasonable strategic choice. *People v. DeBruyn*, No. 352274, 2022 WL 981281, at *6 (Mich. Ct. App. Mar. 31, 2022) (per curiam) (citing *Harrington v. Richter*, 562 U.S. 86, 111 (2011)). In so holding, the Michigan Court of Appeals disregarded *Harrington's* admonition that in certain cases, cross-examination will not do: "the only reasonable and available de-

fense strategy [will] require[] consultation with experts or introduction of expert evidence.” 562 U.S. at 106.

The Michigan Supreme Court denied leave to appeal. App. 9a.

The United States District Court for the Eastern District of Michigan dismissed Mr. DeBruyn’s petition for a writ of habeas corpus, but granted him a certificate of appealability on his ineffective-assistance-of-counsel claim. App. 9a, 68a-69a.

The Sixth Circuit affirmed the dismissal, rejecting Mr. DeBruyn’s argument that the Michigan Court of Appeals’ decision was contrary to or an unreasonable application of the rule announced in *Harrington*. App. 23-24a, 33a; 562 U.S. at 106. Although Michigan had not made the argument, the Sixth Circuit held that the legal principle announced in *Harrington* was too “general”—that this Court had “not adopted [a] hard and fast legal rule” requiring “a lawyer [to] consult a ‘relevant’ expert defense expert before trial in a technical case.” App. 17a-18a. The Sixth Circuit likewise deemed *Hinton* inapposite by limiting the relevance of that case to its particular facts. App. 26a-27a (explaining that *Hinton* was of no help because that case concerned counsel failing to present expert evidence due to a mistaken belief about the availability of funds).

Mr. DeBruyn petitioned for rehearing en banc. In his petition, he emphasized this Court’s recent reminder that “[g]eneral legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court.” *Andrew v. White*, 604 U.S. 86, 95 (2025). He then argued that the legal principle announced in *Harrington* and applied in *Hinton*—that in some criminal cases “the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence”—applied with “with obvious clarity” to his case. *Harrington v. Richter*, 562 U.S. at 106; *Hinton v. Alabama*, 571 U.S. 263, 273 (2014); *Andrew*, 604 U.S. at 95 (quoting *Taylor v. Riojas*, 592 U.S. 7, 9 (2020)). Yet the court of appeals denied rehearing despite the panel’s failure to even discuss *Andrew*, much less explain why it was inapplicable.

REASONS FOR GRANTING THE WRIT

The courts of appeals are divided over the level of specificity at which this Court must define a legal principle in order for it to constitute “clearly established Federal law” under AEDPA. 28 U.S.C. § 2254(d)(1). The confusion flows from the fact that this Court has provided conflicting guidance.

On one hand, this Court has held that its “holdings that speak only at a high level of generality” *can-not* constitute clearly established law under AEDPA. *Brown v. Davenport*, 596 U.S. 118, 136 (2022).

Yet on the other, it has held that “[g]eneral legal principles *can* constitute clearly established law for purposes of AEDPA.” *Andrew v. White*, 604 U.S. 86, 94 (2022) (emphasis added).

This Court has yet to reconcile these seemingly conflicting standards. *See Andrew*, 604 U.S. at 106 (Thomas, J., dissenting) (lamenting that *Andrew* “does not once mention, much less distinguish, our many precedents admonishing lower courts not to define clearly established law too abstractly”). Without guidance, the circuit courts have adopted diverging approaches for defining clearly established federal law.

This a conflict only this Court can resolve, and this case presents an ideal vehicle for this Court to provide much-needed clarity.

I. The Courts of Appeals have long been divided over the level of specificity required to clearly establish federal law under AEDPA.

As the lower courts have long observed, “confusion surrounds what constitutes ‘clearly established Federal law’” under AEDPA. *Greene v. Palakovich*, 606 F.3d 85, 95 (3d Cir. 2010); *see also Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 905 (3d Cir. 1999) (en banc) (McKee, J., concurring) (“One of the unresolved issues created by AEDPA is the level of specificity the Supreme Court must use in fashioning a rule in order for it to be applied as ‘clearly established Federal law’ under AEDPA.”); *Duhaime v. Ducharme*, 200 F.3d 597, 602 (9th Cir. 2000) (noting that the “Supreme Court has not defined ‘clearly established’ law in [the] AEDPA context”) (quoting *MacFarlane v. Walter*, 179 F.3d 1131, 1139 (9th Cir. 1999)).

Rather than clarifying the issue, this Court has muddied the water, announcing competing interpretations regarding the level of specificity at which it must announce a principle in order for it to be “clearly established Federal law” under 28 U.S.C. § 2254(d)(1). Two recent cases from this Court perfectly capture the conundrum.

Less than five years ago, in *Brown v. Davenport*, this Court held that “holdings that speak only at a

high level of generality” cannot clearly establish federal law for purposes of AEDPA. 596 U.S. at 136. This holding was based on prior warnings from the Court “against ‘framing [its] precedents at such a high level of generality.’” *Lopez v. Smith*, 574 U.S. 1, 6 (2014) (per curiam) (quoting *Nevada v. Jackson*, 569 U.S. 505, 512 (2013) (per curiam)).

However, just a couple of years after *Davenport*, this Court held in *Andrew v. White* that “[g]eneral legal principles *can* constitute clearly established law.” 604 U.S. at 94 (emphasis added). This holding flowed from previous cases explaining that “certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt.” *White v. Woodall*, 572 U.S. 415, 427 (2014) (quotation marks and brackets omitted). “Section 2254(d)(1) permits a federal court to grant habeas relief based on the application of a governing legal principle to a set of facts different from those of the case in which the principle was announced.” *Lockyer v. Andrade*, 538 U.S. 63, 76 (2003). And “AEDPA does not ‘require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied.’” *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) (quoting *Carey v. Musladin*, 549 U.S. 70, 81 (2006) (Kennedy, J., concurring in judgment)).

In his dissenting opinion in *Andrew*, Justice Thomas warned that not only are these precedents in tension, but that the Court also did little to reconcile

them. *See Andrew*, 604 U.S. at 106 (Thomas, J., dissenting). Thus, rather than clarify the confusion lower courts began complaining of decades ago, this Court’s most recent cases have only exacerbated it.

Some circuits follow the line of cases culminating in *Brown*, and narrowly interpret this Court’s instruction that clearly established law must “squarely address[] the issue” in a petitioner’s case. *Wright v. Van Patten*, 552 U.S. 120, 125 (2008). However, other circuits follow the line of cases culminating in *Andrew* and understand that AEPDA allows for courts to apply legal rules announced by this Court to “new factual permutations.” *Yarborough v. Alvarado*, 541 U.S. 652, 666 (2004). The courts of appeals are intractably divided over which approach to take.

A. Three circuit courts hold that general principles do not constitute clearly established law.

Some circuits—like the Sixth Circuit below—follow the *Brown* line of cases and require petitioners to identify “clearly established Federal law” with exacting specificity. These courts either reject general principles as clearly established law altogether or recognize them only when this Court has applied the principle in a factually similar case.

For instance, before the Sixth Circuit below, Mr. DeBruyn identified the following legal principle previously articulated by this Court: “Criminal cases

will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both.” *Harrington*, 562 U.S. at 106; see App. 23a. He then emphasized that this Court applied this principle in a novel factual scenario in the post-conviction context. See *Hinton*, 571 U.S. at 263.

Yet the Sixth Circuit held that Mr. DeBruyn could not satisfy § 2254(d)(1). The panel, citing *Brown*, explained that in identifying a “clearly established” legal principle, a petitioner “must take care to describe the principle at an appropriate level of specificity.” App. 14a (citing *Brown v. Davenport*, 596 U.S. at 136). And the Sixth Circuit held that Mr. DeBruyn failed to make that showing because he had not identified a case from this Court “plainly establish[ing] that a lawyer *must* consult a ‘relevant’ defense expert before trial in a ‘technical’ case.” App. 18a. In other words, the Sixth Circuit held that the principle announced in *Harrington* was not “specific” enough to constitute clearly established federal law. Notably, in reaching this conclusion, the Sixth Circuit did not grapple with *Andrew* and ask whether this case might qualify as one in which a “[g]eneral legal principle[] can constitute clearly established law” 604 U.S. at 94.

Instead, the Sixth Circuit chose to ignore *Andrew* altogether. Petition for Rehearing En Banc at 1, *DeBruyn*, 2026 WL 1642434 (No. 24-1905).¹

The Tenth Circuit similarly follows *Brown* while eschewing *Andrew*. See *Martinez v. Quick*, 134 F.4th 1046, 1064 (10th Cir. 2025). In *Martinez*, the Tenth Circuit decided that this Court’s “broad statement” in *Caldwell v. Mississippi*, 472 U.S. 320 (1985) regarding “the Eighth Amendment’s heightened need for reliability in the determination that death is the appropriate punishment in a specific case” was too general to constitute clearly established law. *Id.* at 1064 (internal quotation marks omitted) (quoting *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976)). The Tenth Circuit reasoned that it could not “extract clearly established law from the general legal principles developed in factually distinct contexts.” *Id.* (citation omitted). The court held that petitioner’s claim that the introduction of a racial slur rendered his sentencing fundamentally unfair “bears no similarity” to

¹ The Sixth Circuit continues to enforce this understanding of *Brown* while ignoring *Andrew* outright. It has recently held that precedents from this Court that speak “at a high level of generality” cannot offer grounds for habeas relief, as “broad language” does not give sufficiently “clear direction” to state courts. *Karacson v. Shaver*, 176 F.4th 525, 533 (6th Cir. 2026) (quoting *Brown v. Davenport*, 596 U.S. at 136). In another opinion, the Sixth Circuit similarly held that a petitioner must identify “a clearly established holding with specificity” in order to obtain habeas relief. *Sanders v. Plappert*, 168 F.4th 837, 847 (6th Cir. 2026).

the issue in *Caldwell*, where the prosecutor constitutionally erred by telling the jury that its sentence would be reviewed for correctness. *Id.* The Tenth Circuit therefore deemed *Caldwell*'s "broad" Eighth Amendment holding inapplicable to the petitioner's case given its factual dissimilarity from *Caldwell*. *Id.*² Thus, even after this Court reminded the Tenth Circuit that general legal principles *can* constitute clearly established federal law, the Tenth Circuit has continued to interpret precedents from this Court as "limit[ed] to [their] facts." *Andrew*, 604 U.S. at 94.

Finally, the Fifth Circuit is in the midst of an intra-court battle over the interplay between *Andrew* and *Brown*, with a majority following the teachings of *Brown* while ignoring the import of *Andrew*. Take *Alvarez v. Guerrero*, 162 F.4th 570 (5th Cir. 2025). There, the Fifth Circuit, citing *Brown*, held that there was "no clearly established Supreme Court law" relevant to a criminal defendant's ineffective assistance claim based on undisputed allegations that his lead defense counsel was sleeping during trial. *Id.* at 579. The dissenting judge, citing *Andrew*, argued that the following general principle articulated by this Court should have applied to the case: "when a defendant is deprived of the presence and assistance of his attorney,

² The Tenth Circuit continues to enforce this view. See *Larson v. Stucker*, No. 25-1233, 2026 WL 861682, at *2 (10th Cir. Mar. 30, 2026) (stating that "[h]oldings that speak only at a high level of generality do not supply clearly established federal law under AEDPA") (quoting *Martinez*, 134 F.4th 1064).

either throughout the prosecution or during a critical stage in, at least, the prosecution of a capital case,’ the Sixth Amendment is violated.” *Id.* at 595 (Richman, J., dissenting) (quoting *Holloway v. Arkansas*, 435 U.S. 475, 489 (1978)). But the majority disagreed, reasoning that *Andrew*’s holding is limited both to its “facts and the precise legal issue” it presented. *Id.* at 579 (majority opinion).

Similarly demonstrating the Fifth Circuit’s division over this issue, in *Holberg v. Guerrero*, an equally divided en banc court vacated a panel opinion holding that the State’s intentional nondisclosure of a witness’s confidential informant status violated clearly established law under *Brady v. Maryland*. 130 F.4th 493, *rev’d en banc*, ___ F.4th ___, No. 21-70010, 2026 WL 2364671 (5th Cir. 2025) (mem). In so doing, the concurring judges opined that this was the correct result because, when granting habeas relief, the panel majority “did not identify any case, let alone a Supreme Court case, that ever extended the State’s disclosure obligations to information about a witness’s providing aid to an officer whose affairs were entirely disconnected from the defendant’s case.” *Holberg v. Guerrero*, ___ F.4th ___, No. 21-70010, 2026 WL 2364671 (5th Cir. 2026). In other words, nine judges on the Fifth Circuit concluded that the panel had not identified a specific enough legal principle that was applicable to *Holberg*’s case.

These decisions evince how some circuits, following *Brown* and its doctrinal antecedents, demand

from petitioners a level of specificity that will be nearly impossible to meet. Under their approach, a legal principle expressly announced by this Court does not constitute clearly established federal law unless this Court has previously applied that principle to materially similar facts. That approach effectively transforms AEDPA’s demanding standard into a requirement that a petitioner identify a Supreme Court case virtually on all fours with his own—a requirement this Court has repeatedly disclaimed.

Indeed, in the face of lower courts construing its AEDPA precedents so stingily, this Court reiterated in *Andrew* that courts of appeals are not “constrained by AEDPA to limit” a case from this Court “to its facts.” 604 U.S. at 94; see *Panetti*, 551 U.S. at 953. Yet the above circuits leave little room for (or outright ignore) *Andrew*’s instruction that general legal principles can themselves constitute clearly established law and courts can apply previously articulated legal principles to “new factual permutations.” 604 U.S. at 95 (quoting *Yarborough*, 541 U.S. at 666).

B. Three jurisdictions hold—in line with *Andrew*—that general legal principles articulated by this Court can constitute clearly established federal law.

By contrast, three circuits have held that general legal principles *can* constitute clearly established

law under AEDPA, following this Court’s reminder in *Andrew v. White*, 604 U.S. 86 (2025).

The Ninth Circuit relied on *Andrew*’s holding that “[g]eneral legal principles can constitute clearly established federal law for purposes of AEDPA” to hold that Arizona’s statutory scheme for child molestation offenses violated the Due Process Clause’s prohibition on burden-shifting. *Bieganski v. Shinn*, 149 F.4th 1055, 1060, 1069 (9th Cir. 2025) (quoting *Andrew*, 145 U.S. at 94). The statutory scheme in question defined any “knowing or intentional touching” of a child as child molestation, requiring a criminal defendant to prove lack of sexual motivation as an affirmative defense by a preponderance of the evidence. *Id.* at 1074-75. While noting that the Court’s precedents were “necessarily general prescriptions,” the Ninth Circuit recognized and applied these general due process principles as clearly established federal law. *Id.* at 1069 (citing *Andrew*, 145 U.S. at 94).

Even before *Andrew* confirmed that general legal principles can constitute clearly established federal law, some circuits had already recognized and applied that principle.

For example, the Third Circuit has held that this Court can state clearly established law “‘in general terms,’” and AEDPA does not require “the full scope of all clearly established laws to be precisely defined.” *Garrus v. Sec’y of Penn. Dep’t of Corr.*, 694 F.3d 394, 404 (3d Cir. 2012) (quoting *Panetti*, 551 U.S. at

953). In *Garrus*, the Third Circuit identified the governing clearly established legal principle as *Apprendi v. New Jersey*'s holding that any fact "other than the fact of a prior conviction" must be submitted to a jury and proved beyond a reasonable doubt if it will increase the penalty beyond the statutory maximum. 530 U.S. 466, 490 (2000); *Garrus*, 694 F.3d at 405. The Third Circuit found that the state court had unreasonably applied *Apprendi* when it permitted the trial court to determine that Garrus's prior conviction involved burglarizing an occupied building. *Garrus*, 694 F.3d at 412. In fact, Garrus had pleaded guilty to second-degree burglary, which requires that the burglarized building was *unoccupied*. *Id.* at 404. The Third Circuit thereby rejected the State's argument that the state court's application of *Apprendi* cannot be unreasonable just because this Court has never "explicitly defined the scope of 'the fact of a prior conviction' exception." *Id.* In other words, the absence of a Supreme Court holding defining the precise contours of its rule did not preclude the Third Circuit from applying this general rule to petitioner's case.³

³ In another case, the Third Circuit held that a state court's decision was an unreasonable application of clearly established federal law when the state court applied a "more specific standard" used by Pennsylvania courts than the "general principles" under *Strickland*. *Gregg v. Rockview*, 596 F. App'x 72, 76 n.4 (3d Cir. 2015). This decision again reveals an understanding that state court decisions can be contrary to or an unreasonable application of general legal principles articulated by this Court—

The Eighth Circuit has also affirmed that general principles can constitute clearly established law. In *Marcrum v. Luebbers*, the Eighth Circuit applied the “general principle” of *Strickland v. Washington*’s ineffective assistance standard to petitioner’s claim. 509 F.3d 489, 504 (8th Cir. 2007) (citing *Strickland v. Washington*, 466 U.S. 668, 688 (1984)). Noting that this Court has held that “even a general standard may be applied in an unreasonable manner,” the Eighth Circuit applied *Strickland* and the three cases in which this Court has held that state courts’ application of *Strickland* were unreasonable to “scrutinize” trial counsel’s failure to call witnesses and introduce medical records establishing that petitioner was in a psychotic state on the night he killed the victim. *Id.* at 504-05 (quoting *Panetti*, 551 U.S. at 953). The Eighth Circuit thus applied this Court’s clearly established—but broadly articulated—principles under *Strickland* to a new context.⁴

in that case, the general principles announced in *Strickland*. *Id.* at 76-77.

⁴ Similarly, in *Storey v. Roper*, the Eighth Circuit applied general legal principles to petitioner’s claim that the late disclosure of victim impact evidence violated his Sixth Amendment rights. 603 F.3d 507, 516 (8th Cir. 2010). Specifically, this Court held in *Apprendi* that a defendant is entitled to have a jury decide that he “is guilty of every element of the crime with which he is charged, beyond a reasonable doubt,” and that any evidence that increases a penalty beyond the statutory maximum must be submitted to a jury. *Apprendi*, 530 U.S. at 490. The Eighth Circuit then applied this general principle to a factually distinct scenario, holding that under *Apprendi*, the petitioner had a Sixth

These decisions reflect the other side of the divide. Following *Andrew* and its doctrinal antecedents, these courts recognize that AEDPA does not require a petitioner to identify a decision from this Court applying the governing rule to materially similar facts, or that a legal principle must be articulated with such specificity that it applies neatly to the facts at hand. Rather, a principle may be clearly established even when articulated at a general level, and federal courts may apply that principle to factual circumstances this Court has never confronted. *See Andrew*, 604 U.S. at 94. Thus, unlike the Sixth, Tenth, and Fifth Circuits, these courts do not treat the absence of a factually analogous decision from this Court as dispositive. Instead, consistent with *Andrew*, *Panetti*, and *Yarborough*, they ask whether this Court has announced a governing legal principle that is sufficiently established to apply to a petitioner's claim.

II. The question is enormously consequential.

The question presented is enormously consequential. The level of specificity at which this Court must articulate a legal principle in order for it to constitute clearly established federal law is relevant to nearly every habeas petition filed in federal court. And given that Congress specified that only this Court can clearly established federal law under

Amendment right to notice of victim impact evidence. *Storey*, 603 F.3d at 516.

AEDPA, only this Court can resolve the question of how clearly its precedents must speak. *See* 28 U.S.C. § 2254(d)(1).

Further militating in favor of review, in addition to the lower courts, *this* Court has recognized that this question lacks clarity. Over a decade ago, this Court conceded that “the difference between applying a rule and extending it is not always clear.” *Yarborough*, 541 U.S. at 666. Yet despite this admission, it still has not crystalized how to distinguish between applying a general legal principle to a new context and improperly extending it. And the tension between the conflicting statements in *Andrew* and *Brown* has only further “confuse[d] lower courts.” *Andrew*, 604 U.S. at 107 (Thomas, J., dissenting).

This petition provides the Court with an excellent vehicle for clarifying the level of specificity necessary to clearly establish federal law under AEDPA.

The question is cleanly presented. Below, Mr. DeBruyn argued that in *Harrington*, this Court clearly established the following legal principle: “Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence.” 562 U.S. at 106; App. 23a. And he argued that the Michigan Court of Appeals decision failing to apply this principle was contrary to or an unreasonable application of clearly established federal law (indeed, the

Michigan Court of Appeals ignored the principle altogether). *See* App. 28a; *People v. DeBruyn*, No. 352274, 2022 WL 981281 (Mich. Ct. App. Mar. 31, 2022) (per curiam).

Tellingly, Michigan did not argue below that the principle announced in *Harrington* was not specific enough to constitute clearly established federal law,⁵ but the Sixth Circuit rejected Mr. DeBruyn’s petition on that ground anyway. *See* App. 14a. According to the Sixth Circuit, Mr. DeBruyn had to identify a decision from this Court that applied precisely to the facts of his case: “when a prosecution’s case involves a ‘technical’ issue, defense counsel *must* consult a ‘relevant’ defense expert before trial to prepare possible defenses.” App. 17a. Because he did not, the Sixth Circuit rejected Mr. DeBruyn’s petition as he, in its view, failed to “take care to describe the principle at an *appropriate level of specificity*.” App. 14a.

But therein lies the rub. This Court has given conflicting advice on the “appropriate level of specificity” needed to satisfy AEDPA. And the answer could differ depending on whether a court last read *Andrew* or *Brown*. Here, the Sixth Circuit followed its pattern

⁵ Michigan instead cited *Harrington* for a different principle: that “[i]n many instances cross-examination will be sufficient to expose defects in an expert’s presentation,” and “[w]hen defense counsel does not have a solid case, the best strategy can be to say that there is too much doubt about the State’s theory for a jury to convict.” 562 U.S. at 111.

of choosing to rely on *Brown* while completely ignoring *Andrew*. See App. 14a. If the Sixth Circuit had instead followed *Andrew* and applied the general rule announced in *Harrington* to the facts of the case, it would have been clear that the Michigan Court of Appeals' disposition was contrary to or an unreasonable application of clearly established federal law. As explained in more detail below, see *infra* Section III, the entire case turned on expert evidence regarding medical cause of death, where Mr. DeBruyn had to rebut the army of experts the State called to prove its case. Because the Sixth Circuit's decision rose and fell on the level of specificity at which Mr. DeBruyn was able to articulate clearly established federal law, this case provides the perfect opportunity for the Court to clarify this long vexing standard.

III. The Sixth Circuit's decision is wrong.

The Sixth Circuit's decision is also wrong. The court of appeals not only ignored *Andrew*, which itself makes it a candidate for summary reversal. It also disregarded the rule announced in *Harrington* that this Court already applied to a novel factual context in *Hinton*, proving that the rule announced in *Harrington* was in fact articulated at "an appropriate level of specificity" to constitute clearly established federal law. App. 14a.

Harrington involved an ineffective-assistance-of-counsel claim based on defense counsel's failure to

consult with a forensics expert or introduce expert forensic evidence. 562 U.S. at 106. This Court rejected the claim, holding that defense counsel made a reasonable strategic decision in pursuing another defense strategy. *Id.* at 106-07. Along the way, however, *Harrington* took pains to observe that in certain criminal cases, “*the only* reasonable and available defense strategy requires consultation with experts or introduction of expert evidence.” *Id.* at 106 (emphasis added). The petitioner’s case in *Harrington* was just not one of these cases. *See id.* at 111.

Then, in *Hinton*, this Court applied this principle from *Harrington* to hold that Hinton’s trial attorney performed deficiently. 571 U.S. at 274. In *Hinton*, the “State’s case turned on whether its expert witnesses could convince the jury” that the bullets recovered at the crime scenes had come from a revolver belonging to petitioner’s mother. *Id.* at 264-65. Drawing from *Harrington*, *Hinton* explained that given that “the core of the prosecution’s case was the state experts’ conclusion” about the ballistics evidence, “effectively rebutting that case required a competent expert on the defense side.” *Id.* at 273 (citing *Harrington*, 562 U.S. at 106).

Hinton is a blueprint for how habeas courts should apply previously articulated legal principles to new factual contexts. The facts of *Harrington* and *Hinton* are undoubtedly distinct. Still, *Hinton* discerned that “[t]his was such a case” where the princi-

ple announced in *Harrington* applied. *Id.* at 273. Indeed, the unanimous Court in *Hinton* understood itself as doing nothing more than conducting “a straightforward application of [its] ineffective-assistance-of-counsel precedents.” *Id.* at 272.

In addition to refusing to apply *Harrington*, the Sixth Circuit articulated a cramped reading of *Hinton* that unduly cabins what counts as clearly established law. The court of appeals interpreted *Hinton* as standing for the narrow principle that it is “unreasonable for an attorney not to seek funding for an expert witness where that failure was based not on a strategic choice but on a mistaken belief about the availability of funds.” App. 27a. Yet the fact that a defense attorney’s failure to request additional funds was constitutionally deficient in *Hinton* does not mean that this is the *only* scenario in which the *Harrington* principle applies. This narrow reading of this Court’s precedent ignores the fact that *Hinton* was “such a case” in which the broader legal principle articulated in *Harrington* governed. *Hinton*, 571 U.S. at 273. In fact, the Court’s application of *Harrington*’s principle to a factually distinct context indicates the generally applicable nature of the rule.

Had the Sixth Circuit faithfully followed *Harrington* and *Hinton*, it would have found the Michigan Court of Appeals’ disposition of Mr. DeBruyn’s ineffective-assistance-claim to be an unreasonable application of clearly established federal law. Yet the Sixth

Circuit did not even recognize the principle in *Harrington* as clearly established law, let alone analyze whether the state court's application of it was unreasonable.

Just as in *Hinton*, the “core of the prosecution’s case was state experts’ conclusions.” 506 U.S. at 273. Yet, as in *Hinton*, trial counsel “failed to make even the cursory investigation” required to “present an effective defense.” *Id.* at 274. And like in *Hinton*, trial counsel recognized that Mr. DeBruyn’s “defense called for an effective rebuttal of the State’s expert witnesses,” *Id.* at 266, and thus “required a competent expert on the defense side.” *Id.* at 273. Indeed, the need for a competent defense expert was even clearer because in *Hinton*, the State called only two experts, *id.* at 268; here, the State called four. *See* App. 40a.

The only differences were that in *Hinton*, the experts were opining on ballistics, whereas here, they were opining on toxicology. And in *Hinton*, trial counsel’s expert’s inadequate investigation led him to make an “inexcusable mistake of law” regarding how much funding he could obtain. *Id.* at 275. But here, Mr. DeBruyn’s trial counsel’s inadequate investigation was the failure to pick up the phone to speak with an appropriate expert, resulting in the failure to consult or retain an expert they were actively seeking out whom they *knew* would be necessary to present an adequate defense.

In fact, what happened here is more egregious than *Hinton*. In *Hinton*, defense counsel at least called *an* expert to meet the force of the state's experts, but defense counsel knew that expert was inadequate. *Id.* at 274-75. By contrast here, defense counsel called *no* experts to meet the force of the State's *four* experts who opined on Ms. Gesiakowski's cause of death. App. 53a-54a. And this was despite the fact that trial counsel's strategy was to dispute the State's experts' conclusions and affirmatively suggest alternative causes of death. While *Hinton*'s counsel failed to present an adequate expert due to his mistake of law, Mr. DeBruyn's counsel failed to conduct an adequate investigation and thus failed to consult, retain, or call *any* qualified expert for no good reason at all.

Finally, just as in *Hinton*, it is clear that competent defense experts would have made a difference. In *Hinton*, three experts testified in post-conviction proceedings, and each challenged the State's experts' conclusions. *See id.* at 271. Here, two experts did the same, except they testified in more emphatic terms—not only did they disagree with the State's experts, they testified that the State's experts' conclusions were contrary both to the evidence and to science. *See* App. 46a.

Hinton is thus identical to Mr. DeBruyn's case in all material respects. This case is the epitome of one "where the only reasonable . . . defense strategy require[d] consultation with experts or introduction of expert evidence." *Harrington*, 571 U.S. at 273. But by

unduly heightening the standard for clearly established law under § 2254(d)(1), the Sixth Circuit failed to see this.

The Sixth Circuit's decision is also impossible to square with this Court's analysis in *Andrew*.

In *Andrew*, this Court held that at the time of the Oklahoma state court's decision, "clearly established law provided that the Due Process Clause forbids the introduction of evidence so unduly prejudicial as to render a criminal trial fundamentally unfair," citing the general legal principle it had articulated in *Payne v. Tennessee*, 501 U.S. 808, 825 (1991). *Andrew*, 604 U.S. at 96. *Payne* concerned whether the Eighth Amendment prohibits a capital sentencing jury from considering victim impact evidence. 501 U.S. at 817. The question was whether this legal principle applied in the factually distinct context raised by *Andrew*, namely the admissibility of evidence about Andrew's sex life and characteristics as a wife and mother. See *Andrew*, 604 U.S. at 87-88. This Court held that the Tenth Circuit "erred by refusing to even consider whether the [state court] unreasonably applied established due process principles to Andrew's case," and that it was mistaken in "limit[ing] *Payne* to its facts." *Id.* at 94-95.

The Sixth Circuit committed similar errors. It, too, mistakenly limited *Harrington* and *Hinton* to their facts, and "erred by refusing to consider whether" the Michigan Court of Appeals unreasonably applied

the Sixth Amendment principles established by those cases to the facts here. *Andrew*, 604 U.S. at 95. Because the Sixth Circuit “never considered whether the state court’s application of that law was unreasonable,” *id.* at 95-96, and in fact, failed to consider *Andrew* at all, at a minimum, this Court should grant the petition, vacate the judgment of Sixth Circuit, and remand for the Sixth Circuit to “conduct that inquiry in the first instance.” *Id.*

Due to Mr. DeBruyn’s counsel’s deficient performance, the jury never heard defense experts testify that Michigan’s theory of the case was not only improbable, but impossible. This exculpatory evidence posed far more than the “[u]ncertainty” of guilt that “cannot be squared with the beyond-a-reasonable-doubt standard applicable in criminal trials.” *Burrage v. United States*, 571 U.S. 204, 218 (2014) (Scalia, J.). It means that the jury never heard from experts who would have explained that Mr. DeBruyn is innocent of the crime the State charged him with committing.

This Court has repeatedly recognized “the injustice that results from the conviction of an innocent person,” *Schlup v. Delo*, 513 U.S. 298, 324-25 (1995), and has stated that innocence claims lie “close to the core of habeas corpus.” *Fernandez v. United States*, 608 U.S. 411 (2026) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973); see also *Lefkowitz v. Newsome*, 420 U.S. 283, 303 (1975) (Powell, J., dissenting) (“The

historic and honored purpose of habeas corpus, and indeed its only justification, is to provide the added assurance to a free society that no innocent person will suffer an unconstitutional deprivation of liberty.”). But because of the Sixth Circuit’s erroneous view of what constitutes clearly established federal law under AEDPA, no federal court has decided the merits of Mr. DeBruyn’s constitutional claim.

Allowing lower courts to refuse to apply legal principles announced by this Court would flout AEDPA’s text, which makes this Court the sole source of “clearly established Federal law.” 28 U.S.C. § 2254(d)(1). Without further guidance from this Court about what constitutes clearly established law, lower courts will continue to uphold state-court decisions even when a petitioner has suffered a constitutional violation, not because the state court’s reasoning survives AEDPA deference, but because the lower court failed to identify the correct governing legal principle in the first place.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari to clarify the level of specificity at which its precedents must speak to clearly establish federal law under AEDPA. Alternatively, it should grant the petition, vacate the Sixth Circuit’s decision, and remand for the Sixth Circuit to consider how this Court’s decision in *Andrew v. White* impacts its analysis of this case.

Respectfully submitted,

Daniel S. Harawa

Counsel of Record

NEW YORK UNIVERSITY

SCHOOL OF LAW

FEDERAL APPELLATE CLINIC

245 Sullivan Street

Fifth Floor

New York, NY 10012

daniel.harawa@nyu.edu

(212) 998-6420

Counsel for Petitioner

September 17, 2026

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — AMENDED OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MARCH 5, 2026	1a
APPENDIX B — AMENDED JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MARCH 5, 2026	34a
APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED JUNE 28, 2024	36a
APPENDIX D — DENIAL OF REHEARING EN BANC OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MAY 4, 2026	70a

1a

**APPENDIX A — AMENDED OPINION OF THE
UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT, FILED MARCH 5, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1905

SCOTT ALLEN DEBRUYN,

Petitioner-Appellant,

v.

ADAM DOUGLAS, WARDEN,

Respondent-Appellee.

Appeal from the United States District Court for the
Eastern District of Michigan at Flint.
No. 4:23-cv-10219—Shalina D. Kumar, District Judge.

Argued: June 12, 2025

Decided and Filed: March 5, 2026

Before: THAPAR, READLER, and BLOOMEKATZ,
Circuit Judges.

AMENDED OPINION

READLER, Circuit Judge. A Michigan state jury convicted Scott Allen DeBruyn of delivering oxycodone to his friend, causing her death. Following the verdict, DeBruyn filed a motion for a new trial claiming that

Appendix A

he received ineffective assistance of counsel. The state courts denied his claims on the merits. He then petitioned for a writ of habeas corpus in federal court, renewing the same claims. The district court denied his petition. Because DeBruyn cannot surmount the requirements in the Antiterrorism and Effective Death Penalty Act of 1996, we affirm.

I.

A. On April 12, 2017, upon waking up in his hotel room after a night of drinking, Scott DeBruyn found his friend Camille Gesiakowski slumped over the edge of her bed, her eyes open. He left the room and walked to the hotel's front desk, where he said to an employee, "I think we're going to need an ambulance." Jury Trial Tr., R.7-9, PageID 894-95. When medical personnel arrived, they confirmed that Gesiakowski was dead, having experienced a drug overdose.

An ensuing investigation by law enforcement revealed the following. DeBruyn had known Gesiakowski since she was a teenager; she used to date his son. Then, sometime in 2015, DeBruyn began having sex with her. According to one of DeBruyn's trial lawyers, the two may not have had "the healthiest" relationship. Jury Trial Tr., R.7-7, PageID 473. DeBruyn was in his fifties, had no job, and lived at his mom's house. Gesiakowski was in her twenties and struggled with drug addiction—oxycodone in particular. DeBruyn fueled her habit, providing her drugs and telling her they would make her feel better.

Appendix A

Gesiakowski did a stint in county jail from August 25, 2016, until April 7, 2017. She died five days after she was released, again, in a hotel room with DeBruyn. This case centers on what happened in the days leading up to her passing.

Between April 1 and April 6, Gesiakowski had seven phone calls with DeBruyn from jail. During these recorded calls, DeBruyn asked Gesiakowski to “hang out” after she was released, promising her that they would “be partners in crime” “like old times.” Jury Trial Tr., R.7-8, PageID 726, 734, 736. He also told her he would get her the “good stuff” once she returned home, which prompted several discussions about oxycodone. *Id.* at PageID 730.

During one call, for example, Gesiakowski told DeBruyn, “I wish I . . . could take an oxy right now. I’ve got the worst headache ever”; “I can’t wait to do some oxy”; “I just wish I could take a fricking oxy.” Jury Trial Tr., R.7-9, PageID 1033-34. DeBruyn replied, “I’ve got some. There’s [just] no way I can get them to ya [now].” *Id.* at PageID 1034. During another call, Gesiakowski told DeBruyn that she could not “wait to take some oxys.” Jury Trial Tr., R.7-8, PageID 730. DeBruyn replied, “Yeah, . . . I’ve got some.” *Id.* And in a third call, Gesiakowski said to DeBruyn that she wanted “to take an oxy so bad.” Jury Trial Tr., R.7-9, PageID 1090. DeBruyn replied, “Yeah, I’ve got some of them . . . we’ll hook up [when you get home] and do some partying.” *Id.*

In the morning on April 7, DeBruyn picked Gesiakowski up from jail. He took her to a Walmart, bought cans of air

Appendix A

duster, and then took her to his home. Air duster, it bears noting, contains the chemical difluoroethane. While air duster is commonly used to clean computer keyboards, people can abuse the product by inhaling difluoroethane, which gives off a “euphoric affect.” Jury Trial Tr., R.7-7, PageID 500.

Later in the day, Gesiakowski’s sister, Celia, came to believe that her sister had gone home with DeBruyn. So she went to DeBruyn’s home to find her. When she arrived, Celia discovered Gesiakowski sleeping. Alcohol, empty pill bottles, and air duster cans covered the ground. Celia shook her sister awake. Gesiakowski woke up “delirious” and asked Celia, “Where am I[?]” Jury Trial Tr., R.7-9, PageID 902-03. Celia rushed her sister home and begged her not to see DeBruyn again.

For the next two nights, Gesiakowski stayed with her family. Yet she exchanged several messages with DeBruyn over Facebook. Gesiakowski asked DeBruyn if he could get her “oxys.” Jury Trial Tr., R.7-8, PageID 754. She even called him a “sugar coating liar” because he had not yet made good on his promise to get her the drug. *Id.* at PageID 763. DeBruyn reassured Gesiakowski, telling her that his friend, Lona Daniels, was “bringing” him “oxys.” *Id.* at PageID 754. So, he said, he would soon have “all the stuff,” the “good pills.” *Id.* at PageID 765.

Gesiakowski reunited with DeBruyn at his home on April 9. The following afternoon, DeBruyn bought 40 Percocet pills from Daniels. Percocet has two ingredients: oxycodone (an opioid) and acetaminophen (Tylenol). Less

Appendix A

than one hour after he purchased the Percocet pills, DeBruyn took a picture on his phone of a pill with the inscription “A333.” A333 can refer to a drug (usually, Percocet) containing oxycodone and acetaminophen.

The next day, April 11, DeBruyn and Gesiakowski took a taxi to a Walmart, where they bought several cans of air duster. They then rented a room at a Baymont Inn. The following morning, DeBruyn woke and found Gesiakowski dead. She had oxycodone in her blood and acetaminophen in her urine, the ingredients of Percocet.

When officers arrived on scene, DeBruyn told them what had happened. Gesiakowski inhaled a lot of air duster on April 11. They went to bed at around eight o’clock that night. Throughout the night, Gesiakowski “kept getting up and laying back down.” Jury Trial Tr., R.7-8, PageID 628. She complained of being “hot” and had “turned down” the temperature in the room to “almost zero.” *Id.* at PageID 634-35. She even stripped off most of her clothes because she was so hot. The last time DeBruyn saw Gesiakowski awake was three o’clock in the morning, on April 12. When asked if Gesiakowski had a history of using any drugs, including “[p]ills,” DeBruyn said, “Not that I know of.” *Id.* at PageID 631.

B. Michigan charged DeBruyn with delivering Gesiakowski a controlled substance, causing her death. Mich. Comp. Laws Ann. § 750.317a. To convict on this charge, the State had to show two things: One, that DeBruyn gave Gesiakowski oxycodone (a controlled substance); and two, that the oxycodone was a “substantial

Appendix A

factor” in her death. *People v. DeBruyn*, No. 352274, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *5 (Mich. Ct. App. Mar. 31, 2022) (per curiam).

At trial, the State sought to show that DeBruyn gave Gesiakowski oxycodone in the form of Percocet. In the days leading up to, and after, her April 7 release from jail, Gesiakowski asked DeBruyn for oxycodone several times. Then, on April 10, DeBruyn purchased 40 Percocet pills, which contains oxycodone and acetaminophen. Less than an hour later, DeBruyn took a picture on his phone of a pill with the inscription “A333,” which can refer to oxycodone and acetaminophen. The next day, April 11, DeBruyn and Gesiakowski went to a hotel room for the night. Gesiakowski was found dead the following morning. Medical personnel confirmed that she died from a drug overdose. She had oxycodone in her blood and acetaminophen in her urine, the two ingredients of Percocet. Taken together, these uncontradicted facts, the State argued, showed that DeBruyn gave oxycodone to Gesiakowski, who died after consuming the drug. As the State described these events during closing arguments, “[t]here is simply no other explanation as to how [Gesiakowski] could have gotten her hands on any [oxycodone] independent of Scott DeBruyn” and his Percocet. Jury Trial Tr., R.7-11, PageID 1545.

Next, the State presented expert witness testimony to demonstrate that the oxycodone found in Gesiakowski’s blood was a substantial factor in her death. Gesiakowski died from a “mixed-drug” overdose caused by four drugs/chemicals in her blood: (1) oxycodone (an opioid),

Appendix A

(2) tramadol (an opioid), (3) fluoxetine (Prozac), and (4) difluoroethane (a chemical). Was the oxycodone a substantial factor in her death? Yes, two experts explained. To begin with, Gesiakowski probably had little, if any, tolerance to oxycodone at the time of her death, as she had not had access to the drug from August 2016 (when she went to jail) until April 10 (the day DeBruyn bought her Percocet pills). Gesiakowski also had 180 nanograms per milliliter of oxycodone in her blood, an amount approximately five times the therapeutic range. From this record, the experts said, oxycodone was easily a substantial factor in Gesiakowski's death; in fact, the drug alone could have killed Gesiakowski by causing respiratory failure. The prosecution summed up the expert testimony this way during closing arguments: "[W]e know . . . that oxycodone was a contributing cause and a substantial cause and could have, in and of itself, all alone, killed her." Jury Trial Tr., R.7-11, PageID 1544.

DeBruyn's lawyers countered that the State had failed to prove beyond a reasonable doubt that oxycodone was a substantial factor in Gesiakowski's death. Counsel presented this defense via cross-examination of the State's experts. They began by getting one of the experts to acknowledge that it is "difficult" (if not impossible) "to tease out, exactly" the extent to which oxycodone contributed to Gesiakowski's death. Jury Trial Tr., R.7-7, PageID 532. They then presented evidence that Gesiakowski could have died from something unrelated to oxycodone. Specifically, counsel suggested that Gesiakowski could have died from either serotonin syndrome (i.e., high body temperature due to the combined effect of the tramadol and fluoxetine

Appendix A

in her blood) or an arrhythmia (i.e., a fatal heart problem caused by inhaling too much difluoroethane). DeBruyn's lawyers, in short, argued that (1) nothing in the record conclusively proved that oxycodone was a substantial factor in Gesiakowski's death and (2) Gesiakowski could have died from something unrelated to oxycodone. "Causation," DeBruyn's lawyers emphasized, "is a very important thing" that the State failed to prove "beyond a reasonable doubt." Jury Trial Tr., 7-11, PageID 1559.

DeBruyn's defense, however, failed to convince his jury, which convicted him of delivering Gesiakowski a controlled substance causing her death. The trial court later sentenced him to at least 198 months (16.5 years) in prison.

C. DeBruyn appealed his conviction and requested a *Ginther* hearing—the Michigan vehicle for developing facts to support an ineffective assistance claim. *See People v. Ginther*, 390 Mich. 436, 212 N.W.2d 922, 925 (Mich. 1973). The state court of appeals granted his request and remanded the case to the trial court.

The trial court held a two-day *Ginther* hearing. DeBruyn presented two expert witnesses and examined the State's trial experts. Based on the evidence presented at the hearing, DeBruyn constructed two ineffective assistance of counsel claims, which he later raised in a motion for a new trial.

First, DeBruyn claimed, his lawyers performed ineffectively by failing to investigate before trial what he

Appendix A

calls “an acetaminophen-based defense.” Appellant Br. 31. At its core, this defense maintains that Gesiakowski did not consume oxycodone in the form of Percocet, as the State had alleged at trial, because she had no acetaminophen (an ingredient of Percocet) in her blood at the time of her death. The State responded that the absence of acetaminophen in Gesiakowski’s blood was consistent with the prosecution’s theory of the case: Gesiakowski consumed Percocet on April 10/11 and excreted the drug’s acetaminophen into her urine by the time of her April 12 death.

Second, DeBruyn claimed, his lawyers performed ineffectively by failing to call an expert at trial to enhance his defense that oxycodone was not a substantial factor in Gesiakowski’s death. In response, the State argued that DeBruyn’s trial did not require the use of experts by the defense; rather, the State said, DeBruyn’s lawyers were able to effectively present their arguments through cross-examination of the State’s experts.

The trial court rejected DeBruyn’s claims. The Michigan Court of Appeals affirmed. *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *10. And the Michigan Supreme Court denied leave to appeal. *People v. DeBruyn*, 510 Mich. 877, 978 N.W.2d 836 (Mich. 2022) (mem.). Falling short in state court, DeBruyn petitioned for a writ of habeas corpus in federal court. The district court denied his petition. *Debruyn v. Douglas*, No. 23-10219, 2024 U.S. Dist. LEXIS 114870, 2024 WL 3236306, at *12 (E.D. Mich. June 28, 2024). That decision prompted this appeal.

*Appendix A***II.**

DeBruyn renews the same ineffective assistance claims here: His lawyers wrongly failed to investigate an acetaminophen-based defense before trial, and wrongly failed to call an expert witness at trial. To prevail in this habeas setting, DeBruyn faces a steep climb. Start with the challenge in proving a Sixth Amendment violation. DeBruyn must show that his lawyers performed so incompetently that they in effect deprived him of his right “to have the Assistance of Counsel for his defen[s]e.” U.S. CONST. amend. VI. Making that showing requires DeBruyn to prove both that his lawyers performed deficiently, and that their performance prejudiced the outcome of his trial. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To demonstrate deficient performance, DeBruyn must show that his lawyers made objectively unreasonable decisions, considered under all the circumstances. *Id.* at 688. This is a high standard. We start with “a strong presumption” that his lawyers gave “reasonable professional assistance.” *Id.* at 689. We then engage in a “highly deferential” review of their actual performance, asking only whether they made objectively reasonable decisions. *Id.* If DeBruyn can satisfy the performance element, he must also show that he suffered prejudice as a result of his lawyers’ performance. To do so, he must prove a “substantial,” (not “just [a] conceivable,”) likelihood that, but for his lawyers’ performance, he would not have been convicted at trial. *Harrington v. Richter*, 562 U.S. 86, 112, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011). In short, *Strickland* demands that DeBruyn show that he suffered prejudice as a result of his counsel’s deficient performance.

Appendix A

Yet DeBruyn’s burden is increased further still, for he must satisfy these *Strickland* elements against the backdrop of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Through AEDPA, Congress imposed strict limitations on federal courts considering habeas petitions from state prisoners. AEDPA constrains our review of “any claim that was adjudicated on the merits in state court.” 28 U.S.C. § 2254(d). Here, the state courts denied DeBruyn’s claims on the merits, so AEDPA applies. As a result, to surmount AEDPA, DeBruyn must fit his claims into one of the statute’s narrow paths to federal habeas relief. He can try to show that the state court’s adjudication of the relevant 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.” 28 U.S.C. § 2254(d)(1). Or he can try to show that the state court’s decision was “based on an unreasonable determination of the facts.” *Id.* § 2254(d)(2).

Before reaching those issues, we pause to consider a preliminary matter. DeBruyn argues that AEDPA’s standard of review violates Article III of the Constitution because it transfers federal judicial power to state courts. DeBruyn also contends that AEDPA’s standard of review violates the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). But binding cases in our Circuit have already considered these arguments and rejected them. Section 2254(d) limits the power of federal courts to issue the writ of habeas corpus to state prisoners. The statute instructs federal courts that they may issue the writ to prisoners held under a state court

Appendix A

judgment only in limited circumstances: relevant here, when a state court adjudication of a claim on the merits resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Supreme Court precedent, or was based on an unreasonable determination of the facts. 28 U.S.C. § 2254(d). Article III does not prevent Congress from allowing state courts to adjudicate constitutional claims. *Sanders v. Plappert*, 168 F.4th 837, 2026 U.S. App. LEXIS 6233, 2026 WL 593932, at *8-9 (6th Cir. Mar. 3, 2026); *Bowling v. Parker*, 882 F. Supp. 2d 891, 898-900 (E.D. Ky. 2012) (Thapar, J.). Nor does § 2254(d) authorize state courts to perform any judicial function, let alone a federal one. *See Sanders*, 2026 U.S. App. LEXIS 6233, 2026 WL 593932, at *7-8. For these reasons, it is difficult to see how AEDPA transfers federal judicial power to state courts.

Loper Bright does not change matters. There, the Supreme Court held that the Administrative Procedure Act, a federal law governing the basic contours of federal agency action, requires federal courts to exercise independent judgement in determining whether a federal agency has acted within its statutory authority. *Id.* at 2273. We will not dwell on DeBruyn’s argument that *Loper Bright* requires us to strike down AEDPA’s standard of review. We have held that it clearly does not. *Sanders*, 2026 U.S. App. LEXIS 6233, 2026 WL 593932, at *7-8, 10 (explaining why AEDPA is constitutional after *Loper Bright*); *see also Miles v. Floyd*, No. 24-1096, 2025 U.S. App. LEXIS 7146, 2025 WL 902800, at *3 (6th Cir. Mar. 25, 2025) (making similar arguments). We will instead repeat what was said above: Neither *Loper Bright* nor

Appendix A

DeBruyn’s argument about transferring federal judicial power to state courts prohibit Congress from setting standards for when federal courts may issue the writ of habeas corpus to state prisoners.

A. Turn now to the merits, starting with DeBruyn’s claim that his attorneys performed ineffectively by failing to investigate an “acetaminophen-based defense” before trial. Appellant Br. 31. The state court of appeals denied this claim both for lack of deficient performance and prejudice, so AEDPA’s highly deferential standard of review applies. *Rayner v. Mills*, 685 F.3d 631, 638 (6th Cir. 2012). And DeBruyn’s claim fails under AEDPA, as he has not shown that the state court decision unreasonably applied Supreme Court precedent or turned on an unreasonable determination of the facts.

Performance. The state court of appeals held that DeBruyn’s lawyers were not constitutionally ineffective in foregoing any investigation into an acetaminophen-based defense before trial. The court reasoned that counsel’s “determination of trial strategy”—including “decisions about which defenses and arguments to present” at trial—“did not fall below an objective standard of reasonableness.” *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *5, *7. Disagreeing with that conclusion, DeBruyn contends that the state court’s decision “involved an unreasonable application of[] clearly established Federal law,” entitling him to relief under AEDPA. 28 U.S.C. § 2254(d)(1). To succeed on that claim, DeBruyn must follow a well-trodden path. He must initially identify a legal principle “clearly established” by

Appendix A

a decision of the Supreme Court. For a legal principle to be “clearly established,” it must originate from a Supreme Court holding, and not from its dicta. *White v. Woodall*, 572 U.S. 415, 419, 134 S. Ct. 1697, 188 L. Ed. 2d 698 (2014). And in identifying the “clearly established” legal principle on which he relies, DeBruyn must take care to describe the principle at an appropriate level of specificity. *Brown v. Davenport*, 596 U.S. 118, 142 S. Ct. 1510, 1525, 212 L. Ed. 2d 463 (2022).

DeBruyn characterizes the relevant legal principle as follows: Defense counsel “has a constitutional obligation to reasonably investigate possible defenses” before trial. Appellant Br. 31. That purported principle is helpful only insofar as it goes. True, counsel must undertake a “thorough investigation of law and facts relevant to plausible options” for the defense. *Strickland*, 466 U.S. at 690. But *Strickland* does not require counsel to investigate every conceivable defense. *Id.* at 690-91. Instead, counsel’s defense strategy must be supported by a “reasonable professional judgment[,]” measured by “all the circumstances.” *Id.* at 691. Where, as here, a petitioner argues that his counsel failed to investigate a defense before trial, we ask only whether counsel made a “reasonable” defense “decision,” one that made “particular investigations unnecessary.” *Id.* If a counsel’s “choices” about defense strategy are reasonable “based on predictions of how . . . trial [might] proceed,” we may not second guess those “choices.” *Premo v. Moore*, 562 U.S. 115, 132, 131 S. Ct. 733, 178 L. Ed. 2d 649 (2011). Through it all, we must “affirmatively entertain the range of possible reasons” defense counsel “may have had for proceeding

Appendix A

as [she] did.” *Cullen v. Pinholster*, 563 U.S. 170, 196, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011) (citation modified).

On top of that, AEDPA requires DeBruyn to show that the state court unreasonably applied these principles to the facts underlying his claim. 28 U.S.C. § 2254(d)(1). To do that, he must demonstrate that the state court decision was “so obviously wrong that its error lies beyond any possibility for fairminded disagreement.” *Shinn v. Kayer*, 592 U.S. 111, 141 S. Ct. 517, 523, 208 L. Ed. 2d 353 (2020) (per curiam) (citation modified). So if “disagreement is possible,” DeBruyn’s “claim must be denied.” *Sexton v. Beaudreaux*, 585 U.S. 961, 965, 138 S. Ct. 2555, 201 L. Ed. 2d 986 (2018) (per curiam). In other words, DeBruyn must show that “every fairminded jurist would agree that” his lawyers performed deficiently. *Dunn v. Reeves*, 594 U.S. 731, 141 S. Ct. 2405, 2411, 210 L. Ed. 2d 812 (2021) (per curiam) (citation modified). In making that assessment, we must remember that, under AEDPA, “the more general the rule, the more leeway state courts have” when applying the rule to a defendant’s specific facts. *Sexton*, 585 U.S. at 968 (citation modified). And as *Strickland*’s performance standard is generally defined, the state court had wide “latitude” in holding that DeBruyn’s lawyers performed competently. *Knowles v. Mirzayance*, 556 U.S. 111, 123, 129 S. Ct. 1411, 173 L. Ed. 2d 251 (2009).

DeBruyn’s claim fails. A fairminded jurist could conclude that his trial attorneys, based on a reasonable prediction of how trial might proceed, pursued a reasonable defense strategy, one that made any investigation into an acetaminophen-based defense unnecessary. That

Appendix A

defense would have challenged a key premise of the State's case, namely, that Gesiakowski took oxycodone in the form of Percocet. Gesiakowski, the theory goes, could not have consumed Percocet because she had no acetaminophen in her blood. Yet DeBruyn's lawyers had good reason to presume that Gesiakowski consumed Percocet. The uncontradicted facts show why. Before and after her release from jail, Gesiakowski repeatedly asked DeBruyn for oxycodone. Each time, DeBruyn reassured Gesiakowski that he would get her the drug. Then, on April 10, DeBruyn purchased 40 Percocet pills. Percocet contains oxycodone and acetaminophen. Less than an hour after the purchase, DeBruyn took a picture on his phone of a pill with the inscription "A333," which can refer to oxycodone and acetaminophen. The next day, DeBruyn and Gesiakowski went to a motel room for the night. Gesiakowski was found dead the following morning. She had oxycodone in her blood and acetaminophen in her urine—Percocet's two ingredients.

On this record, a fairminded jurist could conclude that DeBruyn's lawyers made a "reasonable [c]alculation" about "how the trial would proceed": The jury would find that Gesiakowski consumed oxycodone in the form of Percocet before her death. *Harrington*, 562 U.S. at 110; *Premo*, 562 U.S. at 132 (citing *Harrington*, 562 U.S. at 107-08).

In light of the strong evidence that Gesiakowski took Percocet, a fairminded jurist could conclude that DeBruyn's lawyers "ma[de] a reasonable decision" about how to defend their client. *Strickland*, 466 U.S. at 691.

Appendix A

DeBruyn’s lawyers challenged the second premise of the State’s case—that oxycodone was a substantial factor in Gesiakowski’s death. From information gathered from the State’s experts before trial, DeBruyn’s counsel made the following arguments. One, nothing in the record conclusively proved that oxycodone was a substantial factor in Gesiakowski’s death. Two, Gesiakowski could have died from either serotonin syndrome (i.e., increased body temperature due to the combined effect of tramadol and fluoxetine in her blood), or an arrhythmia (i.e., an irregular heartbeat caused by inhaling too much difluoroethane). In short, the theory goes, because Gesiakowski’s cause of death could have been unrelated to oxycodone, the State had failed to prove beyond a reasonable doubt that oxycodone was a substantial factor in her death. Defense lawyers do not perform incompetently by choosing to train their efforts on a reasonable defense challenging a necessary premise of the prosecution’s case. *Cf. Cullen*, 563 U.S. at 196 (citation modified) (instructing that we must entertain any possible reason DeBruyn’s lawyers may have had for not investigating a potential defense). Thus, DeBruyn has not shown that the state court of appeals unreasonably applied clearly established federal law.

DeBruyn’s counterarguments do not change matters. Start with the “clearly established” legal principle he urges—that when a prosecution’s case involves a “technical” issue, defense counsel *must* consult a “relevant” defense expert before trial to prepare possible defenses. Appellant Br. 31, 36. Had his lawyers consulted a relevant defense expert (here, a toxicologist), he says,

Appendix A

they would have discovered his preferred acetaminophen-based defense. (For purposes of resolving this argument, we will assume that DeBruyn’s lawyers did not consult a defense toxicologist before trial.) DeBruyn’s argument fails because he has not identified a Supreme Court holding that clearly establishes his rule. No such precedent plainly establishes that a lawyer *must* consult a “relevant” defense expert before trial in a “technical” case. To be sure, “[c]riminal cases will arise where the only reasonable . . . defense strategy requires consultation with experts” before trial. *Harrington*, 562 U.S. at 788. But because there are “countless ways to provide effective assistance in any given case,” counsel’s failure to “consult” an “expert” may be ineffective only “in some cases.” *Id.* at 788-89 (citation modified). That “formulation is sufficiently general that state courts . . . have wide latitude in applying it.” *Id.* at 789. In short, the Supreme Court has not adopted the hard and fast legal rule DeBruyn advances. *See Dunn*, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 104, 106-08).

No more availing is DeBruyn’s reliance on *Richey v. Bradshaw*, 498 F.3d 344 (6th Cir. 2007). There, a state jury convicted Kenneth Richey of murder by arson. *Id.* at 346. In state court post-conviction proceedings, Richey argued that he received ineffective assistance of trial counsel because his attorney failed to investigate whether the fire was actually caused by arson. *Id.* at 357. The state courts rejected the claim on the merits. *Id.* at 358. Richey then filed a habeas petition in federal court, renewing the same claim. We held under AEDPA that the state courts had unreasonably applied *Strickland*’s performance element.

Appendix A

Why? Because “Richey’s counsel did not conduct the investigation that a reasonably competent lawyer would have conducted into an available defense—that the fire was not caused by arson.” *Id.* at 362.

Richey’s AEDPA holding, however, has been overtaken by subsequent Supreme Court decisions. In *Kendrick v. Parris*, 989 F.3d 459 (6th Cir. 2021), we explained that *Richey* “predates the Supreme Court’s guidance in *Harrington*, which held that a federal court misapplied AEDPA by finding that an [ineffective assistance claim] had merit under *de novo* review and then declaring without further explanation that the state court’s contrary ruling was unreasonable.” *Id.* at 476 (citation modified). As “*Richey* engaged in that type of now-outdated review and barely referenced AEDPA’s deferential standards when granting relief,” its holding that relief was warranted under AEDPA is no longer a viable precedent. *Id.*

In sum, a fairminded jurist could conclude that DeBruyn’s lawyers chose to pursue a reasonable defense strategy that made any investigation into an acetaminophen-based defense unnecessary. Thus, DeBruyn cannot show that the state court’s performance ruling amounted to an unreasonable application of clearly established Supreme Court precedent.

Prejudice. Even if DeBruyn could show that the state court of appeals unreasonably applied *Strickland*’s performance element, he also must demonstrate that the court made a similarly egregious application of *Strickland*’s prejudice element. The state court of appeals

Appendix A

held that DeBruyn suffered no prejudice from his lawyers' failure to investigate an acetaminophen-based defense, *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *9, so AEDPA applies. *Rayner*, 685 F.3d at 638. Recognizing as much, DeBruyn paints the state court's decision as an unreasonable determination of the facts and an unreasonable application of clearly established federal law. 28 U.S.C. § 2254(d). We disagree.

To demonstrate that the state court decision was based on an unreasonable determination of the facts, DeBruyn must show that the underlying facts found by the state court were not just debatable or incorrect but “unreasonable—a substantially higher threshold” for obtaining relief. *Shoop v. Twyford*, 596 U.S. 811, 142 S. Ct. 2037, 2043, 213 L. Ed. 2d 318 (2022) (citation modified). Factual findings of the state court are presumed correct and can be rebutted only by “clear and convincing” evidence. 28 U.S.C. § 2254(e)(1). The state court's prejudice ruling turned on the following. The fact that Gesiakowski had no acetaminophen in her blood at the time of her death was consistent with the State's theory of the case: She consumed oxycodone in the form of Percocet on April 10 or 11 and then excreted the Percocet's acetaminophen into her urine by the time of her death on April 12. *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *7.

The state court of appeals' factual determination was not unreasonable. The *Ginther* hearing showed that Percocet has two ingredients: oxycodone (an opioid) and acetaminophen (Tylenol). When a person consumes Percocet, oxycodone and acetaminophen enter the blood

Appendix A

and then begin to “metabolize.” *Ginther* Hr’g, R.7-17, PageID 1961. Through this process, the two are excreted “by the kidney into the urine.” *Id.* But acetaminophen metabolizes faster than oxycodone, even up to twice as fast in some individuals. Against this backdrop, one of the State’s experts testified that the State’s theory of the case—Gesiakowski consumed oxycodone in the form of Percocet—was “absolutely” “consistent” with the fact that Gesiakowski had no acetaminophen in her blood because her body could have excreted the acetaminophen into her urine by the time of her death. *Id.* at PageID 1997. In adopting the expert’s conclusion, the state court did not unreasonably interpret the evidence. *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *7.

Resisting this conclusion, DeBruyn argues that the state court erred in determining the facts because it adopted the State’s interpretation of the evidence. For example, he asserts that the court “ignored” his expert’s testimony that Gesiakowski could not have consumed Percocet, because she had no acetaminophen in her blood. Appellant Br. 54-55. We recognize the conflicting expert evidence. That said, DeBruyn has not offered clear and convincing evidence that the state court unreasonably erred in choosing to credit the State’s expert testimony over DeBruyn’s. For one thing, as already described, the court, after reviewing the *Ginther* record, determined that Gesiakowski’s blood/urine tests were consistent with the State’s theory of the case. *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *7. A state court does not make a clear and convincing factual error when it chooses to credit a permissible view of the evidence.

Appendix A

Anderson v. City of Bessemer City, 470 U.S. 564, 574, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985); *Hill v. Shoop*, 11 F.4th 373, 389 (6th Cir. 2021) (en banc) (“[F]aced with two reasonable interpretations of evidence, we cannot say that the state court’s decision to go with one over the other was unreasonable.”).

For another thing, DeBruyn’s expert appears to have based his conclusion that Gesiakowski could not have consumed Percocet on his representation that “oxycodone and acetaminophen are metabolized at the same rate.” Ginther Hr’g, R.7-16, PageID 1834-35. Again, ample evidence from the *Ginther* hearing said otherwise.

For these reasons, a fairminded jurist could conclude that no juror would have been swayed by DeBruyn’s acetaminophen-based defense. The prosecution, as the state court of appeals concluded, had a strong case that Gesiakowski consumed Percocet. *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *7. Remember, Gesiakowski repeatedly asked DeBruyn for oxycodone, and he then purchased 40 Percocet pills for Gesiakowski from his friend. A few days later, Gesiakowski overdosed and had Percocet’s two ingredients in her blood and urine. Based on these facts, it was reasonable for the state court to conclude that it was not substantially likely that the jury would have been moved by the argument that Gesiakowski did not take Percocet.

All in all, DeBruyn’s failure-to-investigate claim comes up short.

Appendix A

B. We now consider DeBruyn’s claim that his lawyers performed ineffectively because they failed to call an expert at trial to support their defense that oxycodone was not a substantial factor in Gesiakowski’s death. Here too, the state court of appeals denied this claim for lack of both deficient performance and prejudice, so AEDPA’s highly deferential standards (again) apply. *Rayner*, 685 F.3d at 638. And DeBruyn’s claim (again) fails under AEDPA, because he has not shown that the state court decision unreasonably applied Supreme Court precedent or turned on an unreasonable determination of the facts.

Performance. The state court of appeals found no deficiency in DeBruyn’s lawyers’ decision to not call an expert witness at trial. Counsel’s “strategy to present the defense theories through cross-examination of the prosecution’s experts,” the court explained, was not “objectively unreasonable.” *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *7. DeBruyn counters that the state court’s ruling amounted to an “unreasonable application of[] clearly established Federal law[] as determined by the Supreme Court.” 28 U.S.C. § 2254(d) (1). We disagree.

DeBruyn carries a familiar burden: He must first identify the “clearly established” legal principle on which he relies. On that note, he is correct that “[c]riminal cases will arise where the only reasonable and available defense strategy requires” the “introduction of expert evidence.” *Harrington*, 562 U.S. at 106. But with “countless ways to provide effective assistance in any given case,” counsel typically has “wide latitude” in deciding whether to

Appendix A

call an expert. *Id.* (citation modified); *see also id.* at 111 (noting that *Strickland* “does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense”). Indeed, in presenting a defendant’s case, cross-examination is “sufficient” in “many instances,” especially where counsel’s “overall performance indicates active and capable advocacy.” *Id.* at 111. And counsel need not be “exemplary” during cross. *Dunn*, 141 S. Ct. at 2410 (citation modified). Rather, she needs to exercise “such skill and knowledge as will render the trial a reliable adversarial testing process,” considering all the circumstances. *Strickland*, 466 U.S. at 688. In the end, so long as counsel did not take “an approach that no competent lawyer would have chosen,” her decision not to hire an expert is reasonable. *Dunn*, 141 S. Ct. at 2410 (citing *Burt v. Titlow*, 571 U.S. 12, 23-24, 134 S. Ct. 10, 187 L. Ed. 2d 348 (2013)).

Next, DeBruyn must show that the state court unreasonably applied these principles to the specific facts of his claim. 28 U.S.C. § 2254(d)(1). The state court’s ruling must be “so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Harrington*, 562 U.S. at 103.

DeBruyn’s claim fails twice over. First, a fairminded jurist could conclude that at least one competent lawyer would have chosen to present DeBruyn’s defense through cross examination of the State’s experts. *See Dunn*, 141 S. Ct. at 2411. When “defense counsel does not have a

Appendix A

solid case, the best strategy can be to say that there is too much doubt about the State's theory for the jury to convict." *Harrington*, 562 U.S. at 111. Here, as explained, the prosecution had a strong case that DeBruyn gave Gesiakowski Percocet and that she died after consuming the drug; it was reasonable for the state court to determine that his lawyers decided to use cross-examination to expose flaws in the State's theory and, at the same time, present alternative theories of Gesiakowski's death.

Second, a fairminded jurist could conclude that DeBruyn's lawyers did not perform deficiently in presenting their defense through cross-examination of the State's experts. *See Harrington*, 562 U.S. at 111. In fact, as the state court of appeals explained, the record "supports" that DeBruyn's lawyers conducted "a thorough and knowledgeable cross-examination of the [State's] experts." *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *7. Consider, for example, their serotonin syndrome defense. At trial, DeBruyn's attorney pressed the State's experts on how tramadol and fluoxetine can combine in dangerous ways to produce serotonin syndrome, a "potentially fatal" condition where a person's body cannot absorb serotonin. Jury Trial Tr., R.7-7, PageID 604. Oxycodone plays no role in the syndrome's onset. With increased serotonin in the body, a person can die from "an extremely high temperature." *Id.* at PageID 531. Common symptoms of serotonin syndrome include increased body temperature, agitation, and restlessness. For these reasons, DeBruyn's lawyers argued, Gesiakowski could have died from serotonin syndrome. She had tramadol and fluoxetine in her blood

Appendix A

at the time of her death. And she had classic symptoms of the syndrome in the hours before her death: She was hot, had turned down the air, had stripped almost naked, and was pacing back and forth.

DeBruyn’s counterarguments come up short. He draws a purported “clearly established” legal principle from *Stermer v. Warren*, 959 F.3d 704 (6th Cir. 2020), namely, that when the State offers expert testimony, a lawyer acts incompetently by failing to “retain someone to help respond to the state’s expert testimony.” *Id.* at 739. But our precedent, it bears emphasizing, does not “constitute clearly established Federal law, as determined by the Supreme Court.” *Glebe v. Frost*, 574 U.S. 21, 24, 135 S. Ct. 429, 190 L. Ed. 2d 317 (2014) (per curiam) (citation modified). Nor may we use our decisions to “sharpen a general principle” from the Supreme Court “into a specific legal rule” the Supreme Court has not clearly established. *Marshall v. Rodgers*, 569 U.S. 58, 64, 133 S. Ct. 1446, 185 L. Ed. 2d 540 (2013) (per curiam). Equally true, because *Stermer* expressly refused to base its decision on the expert-witness claim at issue, any discussion there regarding a lawyer’s failure to present an expert was dicta. *Kendrick*, 989 F.3d at 476. And, at all events, the Supreme Court has rejected the precise legal rule DeBruyn derives from *Stermer*. *Harrington*, for instance, confirms that defense lawyers have “wide latitude” in deciding whether to call an expert at trial. *Harrington*, 562 U.S. at 111 (quoting *Strickland*, 466 U.S. at 689).

Not so fast, DeBruyn responds. *Hinton v. Alabama*, 571 U.S. 263, 134 S. Ct. 1081, 188 L. Ed. 2d 1 (2014) (per

Appendix A

curiam), he says, held that “‘the introduction of expert evidence’ is essential when the state’s case turn[s] on . . . expert testimony.” Appellant Br. 43 (quoting *Hinton*, 571 U.S. at 273). *Hinton*’s holding, however, is not so sweeping. There, the Supreme Court deemed it unreasonable for an attorney not to seek funding for an expert witness where that failure was based not on a strategic choice but on a mistaken belief about the availability of funds. *Hinton*, 571 U.S. at 273. But unlike *Hinton*, DeBruyn’s lawyers made a strategic decision to present their defense through cross-examination of the State’s experts. Cf. *Clardy v. Pounds*, 126 F.4th 1201, 1211 (6th Cir. 2025) (holding that counsel did not commit legal error when the failure to procure an expert was not based on a mistake of state law).

Even then, says DeBruyn, defense attorneys perform incompetently whenever they use cross-examination to “affirmatively present[] defense theories.” Appellant Br. 41. No Supreme Court precedent clearly establishes this rule, however. In fact, as already explained, the Supreme Court’s holdings cut the other way. See *Harrington*, 562 U.S. at 111; see also *Dunn*, 141 S. Ct. at 2411 (discussing the manifold ways in which counsel may choose to present a theory).

Lastly, DeBruyn argues that his lawyers performed incompetently because his “jury” “never” heard “evidence” that Gesiakowski could have died from something “other than oxycodone.” Appellant Br. 41. The trial transcript indicates otherwise. The jury heard plenty of evidence that Gesiakowski could have died from something unrelated to oxycodone—serotonin syndrome, as one example.

Appendix A

In sum, the state court of appeals reasonably determined that DeBruyn’s lawyers performed competently in presenting their defense through cross-examination of the prosecution’s experts.

Prejudice. In state court (and here), DeBruyn argued that expert testimony would have enhanced his arguments on four medical topics, each of which would have strengthened his defense that oxycodone did not play a substantial role in Gesiakowski’s death. After reviewing the proposed testimony, the state court of appeals concluded that the jury likely would not have been swayed, meaning no prejudice occurred. Because DeBruyn’s proposed expert testimony was “largely speculative,” the court reasoned, “there would” not “have been a reasonable probability of a different outcome” had his lawyers presented the expert “at trial.” *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *9. DeBruyn paints the state court’s decision as both an unreasonable determination of the facts as well as an unreasonable application of clearly established law. Again, we disagree.

Topic one: opioid residual tolerance and re-tolerance. DeBruyn first focuses on his experts’ proposed testimony about opioid residual tolerance and re-tolerance. At the *Ginther* hearing, DeBruyn’s experts said that opioid users can have “some degree of residual tolerance” to oxycodone even if they do not use the drug for some period of time. Ginther Hr’g, R.7-16, PageID 1896. They added that former opioid users can redevelop a tolerance to oxycodone “very quickly.” Ginther Hr’g, R.7-17, PageID 2017. But beyond those general statements, the experts did

Appendix A

not opine on Gesiakowski's specific tolerance. Nonetheless, this testimony, according to DeBruyn, likely would have changed the outcome of his trial because it "could have precluded oxycodone from being a substantial factor in" Gesiakowski's death. Reply Br. 19. Why? Because, he says, the jury could have found that Gesiakowski had a residual tolerance (or developed a tolerance) to oxycodone by the time of her death on April 12.

To begin, the state court did not commit an unreasonable mistake in finding that "Gesiakowski's potential for opioid tolerance was not" adequately "supported." *DeBruyn*, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at *7. Nothing in the record shows that Gesiakowski had a residual tolerance to 180 nanograms of oxycodone (the amount in her blood) by the time of her death. Nor does the record reveal that Gesiakowski had developed a tolerance to that amount of oxycodone over the five days between her release from jail and her death.

Based on this finding, it was reasonable for the state court to conclude that it was not substantially likely that testimony about opioid residual tolerance and re-tolerance would have changed the jury's verdict. A fairminded jurist could conclude that the "theoretical possibility" that Gesiakowski had been tolerant enough to the 180 nanograms of oxycodone in her blood would not convince any juror that oxycodone was not a substantial factor in her death. *Harrington*, 562 U.S. at 112.

Topic two: serotonin syndrome. DeBruyn next maintains that expert testimony would have enhanced

Appendix A

his trial defense that Gesiakowski died from serotonin syndrome. But a fairminded jurist could conclude that expert testimony about serotonin syndrome would not have likely changed the outcome of his trial, as it would have been cumulative of evidence already presented by his lawyers. *See Cullen*, 563 U.S. at 200.

Through cross-examination, DeBruyn's lawyers made the case that Gesiakowski could have died from serotonin syndrome. Tramadol and fluoxetine, they said, can combine in dangerous ways and produce serotonin syndrome, a "potentially fatal" condition where a person's body cannot absorb serotonin. Jury Trial Tr., R.7-7, PageID 604. In that instance, a person can die from "an extremely high temperature, with increased body temperature, agitation, and restlessness as the common symptoms. *Id.* at PageID 531. And Gesiakowski, DeBruyn's lawyers argued, showed the signs of serotonin syndrome. Her behavior in the hotel room suggested she was hot and agitated—hallmark symptoms of serotonin syndrome. Coupled with the tramadol and fluoxetine in her blood at the time of her death, these facts pointed toward serotonin syndrome as the cause of death.

What more information could DeBruyn's expert witness have told the jury about serotonin syndrome? Something important, DeBruyn says. He points out that one of the prosecution's experts wrongly testified at trial that oxycodone can lead to serotonin syndrome. That, he says, left the jury with the mistaken impression that, even if Gesiakowski died from serotonin syndrome, oxycodone still played a substantial role in her death. The problem for DeBruyn, however, is that his lawyers

Appendix A

did challenge the State's expert on this point at trial. After the State's expert testified that oxycodone can lead to increased serotonin levels, DeBruyn's lawyers confronted him with two international studies concluding that oxycodone "does not affect serotonin levels." Jury Trial Tr., R.7-7, PageID 578. Faced with these studies, the State's expert conceded that if the studies were true, he would "certainly . . . change" his "opinion." *Id.* at PageID 579. But even when apprised of those studies, the jury still found DeBruyn guilty. All in all, because DeBruyn's proposed expert testimony on serotonin syndrome would have been cumulative, a fairminded jurist could conclude it would not have likely changed the outcome of his trial. *See Cullen*, 563 U.S. at 200.

Topic three: difluoroethane. DeBruyn next maintains that an expert would have enhanced his argument at trial that Gesiakowski died from difluoroethane. At trial, recall, the defense argued that Gesiakowski could have died from a heart problem caused by inhaling too much difluoroethane. One of the State's experts, however, testified that Gesiakowski had only 2.2 micrograms per milliliter of difluoroethane in her blood at the time of her autopsy. That is a small amount, he said, especially considering that people have died from difluoroethane with "concentrations [of the chemical around] 29 micrograms." Jury Trial Tr., R.7-7, PageID 512. The defense countered this point at trial by arguing that Gesiakowski could have had a much higher concentration of difluoroethane in her blood at the time of her *death* (even 29 micrograms) because the chemical is volatile and easily escapes from the blood.

Appendix A

Turn, then, to the *Ginther* hearing. There, DeBruyn presented evidence that 5.3 micrograms per milliliter of difluoroethane can cause someone to die from a lethal heart problem. This evidence, DeBruyn argues, “would have made it significantly more plausible that” Gesiakowski “died from huffing [difluoroethane] alone.” Reply Br. 20.

Maybe so. But DeBruyn’s argument fails under AEDPA. At trial, the State’s experts said that it is impossible to know with certainty how much difluoroethane Gesiakowski had in her blood when she died. She could have had 2.2 micrograms (the amount in her blood at the time of her autopsy). Or she could have had a higher amount. Thus, because DeBruyn cannot show that Gesiakowski had more than 5.3 micrograms of difluoroethane in her blood when she died, the amount he presented as potentially lethal, a fairminded jurist could find that his new evidence would not have moved the jury. After all, it established nothing more than a “theoretical possibility” that Gesiakowski died from difluoroethane. *Harrington*, 562 U.S. at 112.

Topic four: seizure. DeBruyn, lastly, emphasizes his experts’ testimony that Gesiakowski could have died from a seizure. At the *Ginther* hearing, DeBruyn’s experts pointed out that Gesiakowski had been prescribed anti-seizure medication (Keppra) in jail and that she had no such medication in her blood at the time of her death. And, they added, if a person “receiving anti-seizure treatment for a seizure condition[] abruptly” stops taking her medication, she could be prone to having a seizure. *Ginther Hr’g*, R.7-17, PageID 2069. DeBruyn takes this testimony and runs

Appendix A

with it. Because Gesiakowski “abruptly stopp[ed]” taking anti-seizure medication, and because she had a seizure condition, DeBruyn says, she had an “increased risk of a fatal seizure,” allowing the jury to find that she died from a seizure, not oxycodone. Reply Br. 22.

A fairminded jurist, however, could find that DeBruyn’s testimony about anti-seizure medication established “nothing more than a theoretical possibility” that Gesiakowski died from a seizure. *Harrington*, 562 U.S. at 112. That theory, in turn, rests on several factual assumptions. One is that Gesiakowski had abruptly stopped taking her medication, a point for which DeBruyn offered no supporting evidence. Yet it is similarly possible that she had stopped taking the medication well before her release from jail. Another is that Gesiakowski had been prescribed anti-seizure medication in jail for a seizure condition. But what if she had been prescribed that medication, as one of the State’s experts pointed out at the *Ginther* hearing, to help her cope with opioid withdrawal?

In sum, a fairminded jurist could conclude that the expert medical testimony DeBruyn offered at his *Ginther* hearing would not have likely moved his jury. Thus, he cannot show that the state court of appeals unreasonably applied *Strickland*’s prejudice prong.

* * * * *

We affirm the district court’s judgment and deny the writ of habeas corpus.

**APPENDIX B — AMENDED JUDGMENT OF
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT, FILED MARCH 5, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1905

SCOTT ALLEN DEBRUYN,

Petitioner-Appellant,

v.

ADAM DOUGLAS, WARDEN,

Respondent-Appellee.

Before: THAPAR, READLER, and BLOOMEKATZ,
Circuit Judges.

AMENDED JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Flint.

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 AFFIRMED.

35a

Appendix B

ENTERED BY ORDER OF THE COURT

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

**APPENDIX C — OPINION AND ORDER OF
THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION, FILED JUNE 28, 2024**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 23-10219
Honorable Shalina D. Kumar
Mag. Judge Elizabeth A. Stafford

SCOTT ALLEN DEBRUYN,

Petitioner,

v.

ADAM DOUGLAS,

Respondent.

**OPINION AND ORDER DENYING THE PETITION
FOR WRIT OF HABEAS CORPUS AND GRANTING
A CERTIFICATE OF APPEALABILITY**

Petitioner Scott Allen DeBruyn (“DeBruyn”), incarcerated at the Saginaw Correctional Facility in Freeland, Michigan, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, through his attorneys, David J. Kramer and Stuart Gary Friedman. DeBruyn challenges his conviction for delivering a controlled substance causing death, Mich. Comp Laws § 750.317a.

Appendix C

For the reasons that follow, the petition for writ of habeas corpus is **DENIED WITH PREJUDICE**.

I. Background

The material facts from DeBruyn’s conviction are gleaned from the Michigan Court of Appeals’ opinion, *See People v. Debruyn*, No. 352274, 2022 Mich. App. LEXIS 1798, 2022 WL 981281, at * 1-3 (Mich. Ct. App. Mar. 31, 2022), which is presumed correct on habeas review pursuant to 28 U.S.C. § 2254(e)(1). *See Shimel v. Warren*, 838 F.3d 685, 688 (6th Cir. 2016).

DeBruyn’s conviction arose from the death of Camille Gesiakowski (“Gesiakowski”), who was found dead in DeBruyn’s motel room on the morning of April 12, 2017. On April 7, 2017, less than one week before she died, Gesiakowski was released from jail where she had served roughly 8 ½ months for violating her probation for charges related to drug use. While incarcerated, Gesiakowski and DeBruyn communicated with each other. The two discussed meeting up after Gesiakowski was released from jail to use “oxy,” a reference to the opioid oxycodone, as well as other drugs. In several exchanges, Gesiakowski expressed a desire to use “oxys”, to which DeBruyn replied that he had some or could buy some. DeBruyn also told Gesiakowski that he could buy some cans of compressed air, commonly known as air duster, which are manufactured for use in cleaning, but are sometimes used for inhaling or “huffing” to produce a disorienting or euphoric effect.

Appendix C

When Gesiakowski was released from jail on April 7, 2017, DeBruyn picked her up. The two went to a Walmart store where DeBruyn purchased two cans of air duster and two bottles of wine. Gesiakowski's sister, Celia, subsequently went to DeBruyn's house and discovered that Gesiakowski was unresponsive, lying on a bed surrounded by pill bottles and a can of air duster. Celia also saw noticed alcohol bottles and guns standing against the wall. Celia revived Gesiakowski and took her to their parents' home.

Gesiakowski and DeBruyn subsequently exchanged numerous messages in which they discussed meeting to use drugs. DeBruyn mentioned his efforts to purchase "pills" and "duster."

Gesiakowski left her parents' house on the evening of April 9, 2017, meeting DeBruyn at his house after he purchased two cans of air duster. On April 10, 2017, DeBruyn purchased another four cans of air duster at Walmart. That same day, DeBruyn purchased 40 Percocet pills, a medication containing oxycodone and acetaminophen, from Lona Daniels and her boyfriend, Michael Montgomery.

On April 11, 2017, Gesiakowski's father Blake called the police and asked them to check on the welfare of his daughter at DeBruyn's house. The police went to the home but did not retrieve Gesiakowski. The victim's father then went to DeBruyn's house but was unable to convince his daughter to come outside. When Blake later returned to DeBruyn's house he discovered that DeBruyn and Gesiakowski had left.

Appendix C

After leaving the house on April 11, 2017, DeBruyn and Gesiakowski took a taxi to a Walmart store, where DeBruyn purchased additional cans of air duster. The two then went to the Baymont Inn in Grand Haven, where DeBruyn rented a room. Blake Gesiakowski went to the motel and told the desk clerk that his daughter might be in danger, but the clerk said that there was nothing he could do. Blake then banged on the door of the motel room where the couple was staying, but the police arrived and warned Blake that he would be arrested if he did not leave.

The following morning, on April 12, 2017, at approximately 6:00 a.m., DeBruyn went to the front desk of the Baymont Inn and told the desk clerk to call 911 because Gesiakowski was not breathing. Although DeBruyn had a cell phone, he did not call 911. While the desk clerk called 911, DeBruyn returned to his room. When police arrived, they observed DeBruyn in the parking lot, smoking a cigarette. Police found Gesiakowski dead in the room. The room was very cold, and Gesiakowski's body was cold to the touch. In the room, police found four empty cans of air duster, but did not find any pills or empty pill bottles.

DeBruyn informed the police that he and Gesiakowski arrived at the motel the day before at 4:30 p.m. and that they "were just hanging out." He told police that they went to bed at approximately seven or eight p.m., but that Gesiakowski said that she did not feel well and went to the bathroom several times to vomit. At approximately 3:00 a.m., Gesiakowski again vomited in the bathroom and again said that she did not feel well. When DeBruyn woke up at approximately 6:00 a.m., he found Gesiakowski was

Appendix C

dead. The victim was found unclothed from the waist up. DeBruyn told the police that she had worn clothes earlier, but she had complained that she was very hot and had turned the air conditioning to a very cold setting.

Prosecutors charged DeBruyn with delivering a controlled substance causing death, alleging that he delivered oxycodone, a Schedule 2 controlled substance, to Gesiakowski, who then died after taking it.

At trial, the prosecution introduced evidence that Gesiakowski died of mixed-drug toxicity, caused by a combination of four of the substances found in her system: oxycodone (a semisynthetic opioid pain reliever), tramadol (a synthetic opioid pain reliever), fluoxetine (an antidepressant branded as Prozac), and difluoroethane (a halogenated hydrocarbon used as an aerosol propellant in compressed air dusters). As to the issue of the cause of death, the prosecution called as witnesses toxicologist Dr. Benedict Kuslikis, toxicologist Dr. Matthew McMullin, pathologist Dr. Matthew Carr, and forensic pathologist and chief medical examiner Dr. David Start. The prosecution's experts generally agreed that all four substances contributed to the victim's death and that oxycodone, a Schedule 2 controlled substance, was a substantial factor in the victim's death. Dr. Start testified that oxycodone was the most significant factor in her death, while Dr. Carr testified that, assuming that the victim had not used oxycodone while incarcerated in jail, the amount of oxycodone she used on April 11, 2017, was alone enough to have caused her death.

Appendix C

Defense counsel argued that the prosecution failed to show that DeBruyn delivered oxycodone to Gesiakowski and also failed to prove that oxycodone was a substantial cause of her death. The defense further argued that serotonin syndrome, which is caused by the interaction of tramadol and fluoxetine, or the effect of difluoroethane alone, had not been excluded as causes of death. Defense counsel did not present an expert witness to support these causation theories but cross-examined the prosecution's experts on the theories that serotonin syndrome or difluoroethane caused Gesiakowski's death.

Following DeBruyn's conviction, the Michigan Court of Appeals remanded the case to the trial court for a *Ginther*¹ hearing on DeBruyn's ineffective assistance of counsel claim. During the hearing, the trial judge took testimony from DeBruyn's trial attorneys, as well as defense experts Dr. Gerald Shiener, a psychiatrist, and Dr. Randall Commissaris, Ph.D., qualified by the trial court as an expert in the areas of pharmacology and toxicology, regarding the cause of the victim's death. The prosecution again called Dr. Kuslikis, Dr. Start, and Dr. Carr, who reiterated their opinions offered at trial and responded to new matters raised by DeBruyn's experts. After the hearing, the judge denied DeBruyn's motion for a new trial.

DeBruyn's conviction was affirmed. *People v. Debruyn*, No. 352274, 2022 WL 981281 (Mich. Ct. App. Mar. 31, 2022), *lv.den.* 978 N.W.2d 836 (2022).

1. *People v. Ginther*, 390 Mich. 436, 212 N.W. 2d 922 (1973).

Appendix C

DeBruyn now seeks a writ of habeas corpus on the following ground:

The Defendant should have been granted a new trial where he demonstrated that trial counsel seriously erred in failing to properly investigate or challenge the State's toxicology evidence. Counsel never consulted with an appropriate expert, was not aware of the relevant literature in the field, and simply hoped to secure the scientific [sic] he needed through cross-examination of the state's witnesses.

II. Standard of Review

28 U.S.C. § 2254(d), as amended by The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), imposes the following standard of review for habeas cases:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

Appendix C

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

A decision of a state court is “contrary to” clearly established federal law if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405-06, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). An “unreasonable application” occurs when “a state court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner’s case.” *Id.* at 409. A federal habeas court may not “issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly.” *Id.* at 410-11. “[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, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011)(citing *Yarborough v. Alvarado*, 541 U.S. 652, 664, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004)). To obtain habeas relief in federal court, a state prisoner is required to show that the state court’s rejection of his or her claim “was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Id.*, at 103.

*Appendix C***III. Discussion**

DeBruyn argues he was denied the effective assistance of trial counsel.

To show that he or she was denied the effective assistance of counsel under federal constitutional standards, a defendant must satisfy a two-prong test. First, the defendant must demonstrate that, considering all of the circumstances, counsel's performance was so deficient that the attorney was not functioning as the "counsel" guaranteed by the Sixth Amendment. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In so doing, the defendant must overcome a strong presumption that counsel's behavior lies within the wide range of reasonable professional assistance. *Id.* In other words, petitioner must overcome the presumption that, under the circumstances, the challenged action might be sound trial strategy. *Strickland*, 466 U.S. at 689. Second, the defendant must show that such performance prejudiced his defense. *Id.* To demonstrate prejudice, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "*Strickland's* test for prejudice is a demanding one. 'The likelihood of a different result must be substantial, not just conceivable.'" *Storey v. Vasbinder*, 657 F.3d 372, 379 (6th Cir. 2011)(quoting *Harrington*, 562 U.S. at 112). The Supreme Court's holding in *Strickland* places the burden on the defendant who raises a claim of ineffective assistance of counsel, and not the state, to show a reasonable probability that the result of the proceeding

Appendix C

would have been different, but for counsel's allegedly deficient performance. *See Wong v. Belmontes*, 558 U.S. 15, 27, 130 S. Ct. 383, 175 L. Ed. 2d 328 (2009).

More importantly, on habeas review, "the question 'is not whether a federal court believes the state court's determination' under the *Strickland* standard 'was incorrect but whether that determination was unreasonable—a substantially higher threshold.'" *Knowles v. Mirzayance*, 556 U.S. 111, 123, 129 S. Ct. 1411, 173 L. Ed. 2d 251 (2009)(quoting *Schriro v. Landrigan*, 550 U.S. 465, 473, 127 S. Ct. 1933, 167 L. Ed. 2d 836 (2007)). "The pivotal question is whether the state court's application of the *Strickland* standard was unreasonable. This is different from asking whether defense counsel's performance fell below *Strickland's* standard." *Harrington v. Richter*, 562 U.S. at 101. Indeed, "because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." *Knowles*, 556 U.S. at 123 (citing *Yarborough v. Alvarado*, 541 U.S. at 664). Pursuant to the § 2254(d)(1) standard, a "doubly deferential judicial review" applies to a *Strickland* claim brought by a habeas petitioner. *Id.* This means that on habeas review of a state court conviction, "[A] state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself." *Harrington*, 562 U.S. at 101. "Surmounting *Strickland's* high bar is never an easy task." *Id.* at 105 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 371, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010)).

Appendix C

DeBruyn first argues that trial counsel was ineffective for failing to call expert witnesses to refute that DeBruyn supplied the victim with the oxycodone that was found in her blood stream. The gist of his argument is that the evidence shows that DeBruyn purchased and gave the victim Percocet, which contains oxycodone and acetaminophen. The autopsy did not find any acetaminophen in the victim's blood stream, although acetaminophen was found in her urine. Nonetheless, DeBruyn's proposed experts testified at the *Ginther* hearing that although acetaminophen breaks down in the bloodstream quicker than oxycodone, that nonetheless it should have been found in the victim's bloodstream so soon after she had taken the oxycodone that was found in her bloodstream. DeBruyn argues that the lack of acetaminophen in the victim's bloodstream shows that it was not the Percocet which DeBruyn gave the victim that led to her death.

The trial judge denied this claim following the *Ginther* hearing in her opinion denying the motion for a new trial: She found the lack of acetaminophen in the blood to not be a substantial defense for three reasons: acetaminophen has a shorter half-life than oxycodone, the rate at which an individual's particular enzymes metabolize various substances, and the acetaminophen may have been below the cut-off for reporting. The judge found that the evidence collectively presented by Dr. Sheiner, Dr. Commissaris and Dr. Kuslikis shows that acetaminophen is metabolized quicker than oxycodone, sometimes twice as fast. The proofs did not show that the lab report's absence of acetaminophen in the blood was proof that acetaminophen was not in the blood at a

Appendix C

lower level than the oxycodone. The judge also noted that it was “indisputable” that acetaminophen must have been in the victim’s blood because it was found in the victim’s urine. ECF No. 1-2, PageID. 20-21. The judge further noted that Dr. Commissaris’ and Dr. Sheiner’s opinions were conditioned on the victim having taken Percocet shortly before her death. Dr. Commissaris testified that the victim’s blood contained a “measurable concentration” of hydromorphone, the metabolite of oxycodone, which indicates that she did not take the pill(s) containing oxycodone shortly before her death, but long enough prior to her death for the acetaminophen to metabolize and the oxycodone to partially metabolize. *Id.* at PageID. 21. There was also evidence that Percocet pills come in different strengths and although the level of acetaminophen stays constant at 325 ng, the level of oxycodone varies between 2.5 and 10 ng. Although Dr. Sheiner testified that in a Percocet overdose one would expect to find high levels of both oxycodone and acetaminophen in the blood, the judge found the relevance of that testimony was diminished in a mixed drug toxicity case, where the prosecution did not need to show that the victim consumed enough Percocet to overdose but only she took enough Percocet to be a substantial contributing factor in her death. *Id.*

The Michigan Court of Appeals rejected this claim on appeal:

Defendant also argues that defense counsel was ineffective by failing to introduce expert testimony that Gesiakowski could not have consumed the Percocet defendant allegedly

Appendix C

provided because Gesiakowski's blood tests did not indicate the presence of acetaminophen. At the *Ginther* hearing, appellate defense counsel presented as an expert witness Dr. Randall Commissaris, Ph.D., whom the trial court qualified as an expert in both pharmacology and toxicology. Dr. Commissaris opined that although the lab report indicates that Gesiakowski consumed oxycodone in the hours before her death, she did not consume it in the form of Percocet because the toxicology screen did not indicate the presence of acetaminophen in her blood.

In response, the prosecution recalled Dr. Kuslikis who testified that although the lab report did not indicate the presence of acetaminophen in Gesiakowski's blood, the report indicated that acetaminophen was present in her urine. He explained that acetaminophen metabolizes up to twice as fast as oxycodone and has a shorter "half-life," and thus it was not unusual that the lab report did not indicate acetaminophen in the blood, which is often present in a level too low to be indicated in a lab report. He further explained that drugs in the blood are excreted by the kidneys into the urine, and that the blood and urine levels of acetaminophen indicated in the lab report were "absolutely" consistent with a person having consumed Percocet. Dr. Start, the chief medical examiner, similarly testified that the lab report

Appendix C

was not inconsistent with Gesiakowski having consumed Percocet. Because a review of the record demonstrates that acetaminophen not being indicated as present in the blood in the lab report did not establish that Gesiakowski did not consume Percocet, it was not a theory that could have defeated the prosecution's proof that Gesiakowski consumed Percocet provided by defendant. Defense counsel therefore was not ineffective for failing to present an expert witness to advance this theory.

People v. DeBruyn, 2022 WL 981281, at * 7.

DeBruyn also argues that trial counsel was ineffective for failing to call an expert to show that the oxycodone was not a substantial cause of the victim's death because:

- (1) the victim was opioid tolerant and 180 ng of oxycodone would not have been fatal to her and applying a Post Mortem Redistribution (PMR) would show that the oxycodone level of 180 ng was actually two to three times higher than the actual amount in the blood,
- (2) The elevated level of Prozac combined with the Tramadol caused serotonin syndrome leading to a fatal seizure,
- (3) huffing DFE lead either to a fatal seizure or a cardiac arrest,

Appendix C

- (4) The lab report did not show the presence of Keppra, an anti-seizure medication the victim had been prescribed in jail, leading to the speculation that she stopped taking the drug and suffered a seizure.

The trial judge rejected the first theory when denying the motion for a new trial. The judge concluded that a re-tolerance theory presumed that the victim was so tolerant to opioids prior to going to jail that a dose of either 180 ng or 130 ng of oxycodone would not be fatal. The judge noted that there had been no evidence that the victim's opioid usage approached the level of a daily opioid user, such as the types of patients described by Dr. Commissaris. There was also no evidence that the victim acquired or sustained a tolerance to the 130 ng or 180 ng of oxycodone while she was in jail. There was thus no evidence to support a theory that the victim had developed a high tolerance to oxycodone such that the dosage she took would not be fatal. ECF No. 1-2, PageID. 24. The judge further noted that one of DeBruyn's attorneys, Mr. Christopher Langholz, consulted with an expert witness, Dr. Daniel Spitz, who opined that the 180 ng of oxycodone alone was enough to kill the victim. Counsel thus concluded that a toxicology expert would not be helpful. *Id.* Mr. Langholz did argue in his closing argument that 180 ng of oxycodone was not fatal, but the jury rejected the argument. *Id.*, PageID. 25. The judge further concluded that PMR was inapplicable due to the short time between the death and autopsy. *Id.*

As to the serotonin syndrome, the judge noted that co-counsel Christine Tober testified at the *Ginther* hearing

Appendix C

that they were able to bring this defense out through the cross-examination of the prosecution witnesses by bringing out that the victim had an elevated level of Prozac combined with similar acting Tramadol, and that she was hyperthermic and agitated before she died. *Id.*, PageID. 25. During the cross-examination of Dr. Kusliskis by co-counsel, he admitted that serotonin syndrome can be a cause of death if it causes too high a heart rate or arrhythmia or if it causes the body temperature to rise too high. In the latter case, the autopsy would show the body tissue to have an almost melted texture. Dr. Kusliskis conceded that the elevated level of Prozac would have to be considered in the mixed drug toxicity in which other drugs played a part, although the tramadol was within the normal range. *Id.*, PageID. 26. Dr. Carr, on cross-examination, admitted that the serotonin syndrome “might have played some component” although he did not change his opinion that the combined levels of oxycodone and tramadol made central nervous suppression and respiratory suppression the more likely cause of death. *Id.* The judge concluded that trial counsel’s decision not to call an expert on serotonin syndrome was not ineffective. *Id.*

The judge rejected the claim that huffing DFE or duster was a significant cause of the victim’s death. At trial, the prosecution presented a Dr. Matthew McMullin, who testified that the victim had 2.2 micrograms of duster in her blood. Dr. McMullin claimed the lowest lethal level of DFE was 29 micrograms and he opined that the DFE did not cause the victim’s death. On cross-examination, defense counsel elicited from McMullin an admission that the level of DFE in the victim’s blood was likely

Appendix C

higher at the time of her death, Dr. McMullin admitting that the level of DFE at the time of death is “slippery” to measure. ECF No. 1-2, PageID. at 27. Dr. Kuslaskis testified at trial that the DFE could have been a player in the victim’s death but not a “huge player.” Counsel on cross-examination got Dr. Kuslaskis to admit that he did not know how the DFE sample had been treated and he further conceded that the level at death could have been higher than 2.2 micrograms. When Dr. Carr testified that 2.2 micrograms of DFE was not lethal, counsel on cross-examination obtained an admission from him that his opinion could change if the level of DFE in the blood was higher. Counsel attempted to get Dr. Start to change his opinion that the 2.2 micrograms of DFE in the victim’s blood was not lethal by confronting him with the fact that DeBruyn and the victim had purchased 19 cans of DFE in the days leading to her death, but Dr. Start did not change his opinion that he believed that oxycodone had been the main cause of death. *Id.*

The judge observed that defense counsel had used the prosecution’s experts to present the theory that cardiac arrest or a seizure caused by huffing DFE was a major contributor to the victim’s death and the jury heard and rejected it. *Id.*, PageID. 27-28. The judge further concluded that the proofs presented at the *Ginther* hearing did not establish that there was additional evidence presented at trial by which counsel could have educated themselves or presented expert testimony to establish huffing DFE as a substantial defense. Although Dr. Commissaris testified at the *Ginther* hearing that he had seen death from a DFE level as low as 5.6 micrograms, and appellate

Appendix C

counsel had presented a treatise showing death as low as 1.1 micrograms, the judge concluded that not calling an expert on this issue did not deprive DeBruyn of a substantial defense that would have changed the outcome of the case. *Id.*, PageID. at 28.

The judge lastly concluded that counsel was not ineffective for failing to call an expert to suggest that the victim had died from a seizure because she had not taken the anti-seizure drug, Keppra, which she had been taking at the jail. The judge reasoned that no evidence had been presented to show that the victim had a medically documented seizure disorder or that she had suffered a seizure in the past, nor was any evidence presented to show that jail personnel had not prescribed Keppra to prevent the victim from suffering withdrawal symptoms while she was incarcerated. *Id.*, PageID. 28-29.

The Michigan Court of Appeals rejected this portion of DeBruyn's claim:

After investigating the role of oxycodone in Gesiakowski's death, defense counsel determined to cast doubt upon the prosecution's theory that oxycodone was a substantial factor in Gesiakowski's death by cross-examination of the prosecution's witnesses rather than calling a defense expert on causation. At the *Ginther* hearing, defense counsel explained that through cross-examination, they were able to use the prosecution's toxicologist and medical examiner to present defendant's theories

Appendix C

that the level of oxycodone in Gesiakowski's blood was not extremely high, and that more significant factors in her death were the likelihood of serotonin syndrome, caused by the combination of tramadol and fluoxetine, and also difluoroethane from huffing air duster. The record supports that defense counsel at trial were able to present these theories through a thorough and knowledgeable cross-examination of the prosecution's experts.

The record thus demonstrates that defense counsel investigated the cause of death by consulting a forensic pathologist and interviewing a toxicologist testifying for the prosecution, both of whom opined that oxycodone was a contributory cause that was a substantial factor in Gesiakowski's death, and defense counsel demonstrated command of the topic while cross-examining the prosecution's expert witnesses at trial; we therefore cannot conclude that defense counsel failed to investigate causation. Similarly, we cannot conclude that defense counsel's strategy to present the defense theories through cross-examination of the prosecution's experts was objectively unreasonable. Counsel was not required to "shop around" until they found an expert willing to offer them a favorable opinion. We conclude that the trial court did not clearly err by determining that defense counsel's performance did not fall below an

Appendix C

objective standard of reasonableness in their investigation of causation and determination of trial strategy.

People v. Debruyne, 2022 WL 981281, at * 7 (internal citation omitted).

The Michigan Court of Appeals further ruled:

Defendant further argues that defense counsel at trial was ineffective for failing to call an expert witness to testify that Gesiakowski's consumption of oxycodone was not a substantial factor in her death because (1) she was opioid tolerant from frequent opioid use, (2) the elevated level of fluoxetine and tramadol combined to cause serotonin syndrome and a fatal seizure, (3) huffing difluoroethane caused a seizure or cardiac arrest resulting in death, (4) the absence of Gesiakowski's prescribed anti-seizure medication in the lab report indicates that she had failed to take the medication and therefore was susceptible to seizure, and (5) post-mortem redistribution may have occurred, which may cause more oxycodone to be observed in the blood after death than was present in the blood at the time of death. We disagree that the record supports the viability of these theories.

With regard to opioid tolerance, Dr. Commissaris testified that Gesiakowski was unlikely to have

Appendix C

died from consuming oxycodone because it was likely that she was opioid tolerant from previous opioid use. He testified that oxycodone will have less effect on someone with tolerance to the drug, that tolerance can arise relatively quickly, and that opioid tolerance will quickly reemerge in a former opioid user when he or she resumes use of the drug. Dr. Commissaris conceded, however, that he had no personal knowledge of Gesiakowski's history of drug use, such as her use of drugs while in jail or following her release. Because Dr. Commissaris' speculation regarding Gesiakowski's potential for opioid tolerance was not supported by the facts of this case, it is unpersuasive, and defendant was not prejudiced by counsel's failure to present a defense expert in toxicology to advance this theory.

With regard to the possibility of a fatal seizure, Dr. Commissaris opined that a seizure appeared probable and could have been caused by (1) serotonin syndrome, resulting from the interaction of fluoxetine and tramadol, (2) huffing difluoroethane, (3) the cessation of Keppra (antiseizure medication prescribed for Gesiakowski while in jail), or (4) some combination of these factors. Dr. Commissaris noted that there was evidence that Gesiakowski felt hot on the night of her death, which is a symptom of serotonin syndrome. Defendant argues that individually or collectively this

Appendix C

evidence demonstrates a reasonable probability of a different outcome had defense counsel called an expert witness to advance the theory that Gesiakowski died of a seizure caused by factors other than oxycodone. When questioned about mixed-drug toxicity, Dr. Commissaris agreed that “mixed drug intoxication” was “very likely” the cause of death, but opined that only tramadol, fluoxetine, and difluoroethane were related to seizures, and that oxycodone was the “least likely contributor” to Gesiakowski’s death.

Dr. Commissaris’ testimony that Gesiakowski suffered a seizure is purely speculative, however. Dr. Commissaris testified that Gesiakowski was at risk for a seizure, but there is no evidence that she, in fact, suffered a seizure; Dr. Kuslikis explained that seizures rarely leave evidence and that there was no evidence in this case that Gesiakowski suffered a seizure. Moreover, Dr. Commissaris’ testimony does not demonstrate that oxycodone was not a contributory cause that was a substantial factor in Gesiakowski’s death. Dr. Commissaris suggested that the other substances combined to cause Gesiakowski to have a seizure causing death; however, the evidence would need to demonstrate that the seizure was the sole cause of harm to adequately contradict the prosecutor’s assertion that oxycodone was a contributing cause that was a substantial factor

Appendix C

in Gesiakowski's death. See *Bailey*, 451 Mich at 677² (An intervening act that causes harm to the victim will “only serve to cut off the defendant's criminal liability when the intervening act is the sole cause of harm.”). Dr. Carr testified that even if Gesiakowski suffered a seizure, mixed-drug toxicity caused her death and oxycodone was a substantial factor in her death. Defense counsel therefore was not ineffective for failing to call an expert witness to advance the theory that Gesiakowski suffered a seizure.

Dr. Commissaris also testified that post-mortem redistribution may have occurred and as a result the level of oxycodone in Gesiakowski's blood may have tested at a higher level after death than the level that actually was in her blood at the time of death. However, Dr. Carr testified that post-mortem redistribution was unlikely in this case because the autopsy was performed very quickly after the victim's death and that certain blood samples were taken from the victim's vitreous humor (eye), which is not susceptible to post-mortem redistribution. Further, Dr. Commissaris' testimony did not establish that if post-mortem redistribution had occurred it would have affected the level of oxycodone in the blood to the extent that it was no longer considered a substantial factor

2. *People v Bailey*, 451 Mich 657, 676; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996).

Appendix C

in Gesiakowski's death. Again, defense counsel was not ineffective for failing to call an expert witness to advance a theory that would not have negated the prosecution's proofs.

People v. DeBruyn, 2022 WL 981281, at * 8-9 (additional citation omitted).

The Michigan Court of Appeals finally concluded that DeBruyn was not prejudiced by counsel's failure to call an expert:

We know certain things from the trial court record in this case. We know that the 23-year-old victim repeatedly implored defendant to obtain oxycodone for her use. We know that defendant obtained oxycodone in the form of 40 Percocet pills and that the next day defendant and Gesiakowski retreated to the motel room where she was found dead the following morning. We know that oxycodone was found in Gesiakowski's blood post-mortem. We know that all of the prosecution's experts testified that the level of oxycodone in Gesiakowski's blood stream, either alone or in combination with other drugs, was sufficient to cause her death. And we know that both of the experts defense counsel consulted before trial opined that the level of oxycodone in Gesiakowski's blood stream was sufficient to cause her death either alone or in combination with the other drugs in her system. We are unable to

Appendix C

conclude that had defendant presented largely speculative alternate theories of the cause of Gesiakowski's death, there would have been a reasonable probability of a different outcome at trial.

People v. Debruyn, 2022 WL 981281, at * 9.

Mich. Comp Laws § 750.317a proscribes delivery of a controlled substance causing death as follows:

A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another person in violation of ... MCL 333.7401, that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years.

The elements of delivering a controlled substance causing death under this statute are (1) delivery to a person, (2) of a schedule 1 or 2 controlled substance other than marijuana, (3) with intent to deliver a controlled substance as proscribed by Mich. Comp Laws § 333.7401, (4) consumption of the controlled substance by a person, (5) resulting in the death of that person from the consumption of the controlled substance. *People v. McBurrows*, 504 Mich 308, 319; 934 N.W. 2d 748 (2019). This statute “punishes an individual’s role in placing the controlled substance in the stream of commerce, even when that individual is not directly linked to the resultant death.” *People v. Plunkett*, 485 Mich. 50, 60; 780 N.W.2d 280 (2010). Mich.

Appendix C

Comp Laws § 750.317a is a general intent crime. *Id.* The Michigan Supreme Court indicated that the statute “does not require the intent that death occur from the controlled substance first delivered in violation of Mich. Comp Laws § 333.7401. Rather, the general intent required to violate Mich. Comp Laws § 750.317a is identical to the general intent required to violate Mich. Comp Laws § 333.7401(2)(a): the delivery of a schedule 1 or 2 controlled substance.” *Id.*

With respect to DeBruyn’s claim that trial counsel was ineffective for failing to call expert witnesses for the defense, the Supreme Court has noted that a counsel’s strategic decision as to whether to hire an expert is entitled to a “‘strong presumption’ of reasonableness.” *Dunn v. Reeves*, 594 U.S. 731, 739, 141 S. Ct. 2405, 210 L. Ed. 2d 812 (2021). The strong presumption of the reasonableness of counsel’s strategic decisions, when a claim of ineffective assistance of counsel involves a decision on whether to hire an expert, recognizes that defense lawyers have limited time and resources, and so must choose from among a number of strategic options, and such decisions are particularly difficult because certain tactics run the risk of harming the defense by undermining credibility with the jury or distracting from more important issues. *Id.* “*Strickland* does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense.” *Harrington v. Richter*, 562 U.S. at 111. The selection of an expert witness by a defense attorney is a “paradigmatic example” of the type of strategic choice that, when made after thorough investigation of the law and facts, is “virtually unchallengeable” under *Strickland*. *Hinton v.*

Appendix C

Alabama, 571 U.S. 263, 275, 134 S. Ct. 1081, 188 L. Ed. 2d 1 (2014).

At the outset, this Court notes that defense counsel did consult with Dr. Daniel Spitz, the Macomb County Medical Examiner. Dr. Spitz opined that the amount of oxycodone contained in the victim's blood stream would be enough to be fatal. Counsel testified that he decided not to call Dr. Spitz because he did not believe that his testimony would be helpful. DeBruyn's current counsel argues that trial counsel was ineffective for consulting Dr. Spitz because he was a pathologist, not a toxicologist, even though defense counsel had initially consulted with Dr. Spitz because the State Appellate Defender Office (SADO) listed him on their site as a toxicologist.

The question for this Court on habeas review is whether any fairminded jurist could agree with the Michigan Court of Appeals that counsel's failure to seek additional expert witnesses to testify about whether the oxycodone supplied by DeBruyn was the oxycodone found in the victim's blood stream and/or that it contributed substantially to her death satisfied the reasonableness standard enunciated in *Strickland*. *Davis v. Carpenter*, 798 F.3d 468, 473 (6th Cir. 2015). "That standard is a general one, governing a great blue-water of attorney conduct: from pre-trial discovery to plea-bargaining, from in-court trial tactics to post-verdict motions, from direct appeals to post-conviction challenges. The Supreme Court has charted only parts of that expanse." *Id.* The Sixth Circuit in *Davis* concluded that when faced with the question of whether trial counsel was ineffective for

Appendix C

failing to seek additional experts to support the defense theory that the victim in that case had died after being accidentally dropped, the Tennessee Court of Appeals found itself in “open water.”:

The Supreme Court has never reached the specific questions that the Tennessee courts answered in this case: how many experts must an attorney contact before proceeding without one, what kinds of outside advice can the attorney rely upon, and ultimately how hard must he try. The only buoy in sight, far off on the horizon, was the Court’s guidance in *Strickland* itself that counsel’s efforts must be within “the wide range of reasonable professional assistance [.]” 466 U.S. at 689, 104 S.Ct. 2052. That rule is as general as they come. And “[t]he more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations.” *Yarborough v. Alvarado*, 541 U.S. 652, 664, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004).

Id., at 473-74.

The Sixth Circuit concluded that the Tennessee Court of Appeals did not unreasonably apply *Strickland* by concluding that trial counsel’s efforts to find a medical expert to testify at a second murder trial that the infant’s fatal injuries could have been sustained when the habeas Petitioner accidentally dropped his child were professionally reasonable. *Id.* at 474. Counsel tried

Appendix C

to convince an expert from the first trial to testify at the second trial and worked side-by-side with the first expert's attorney to find another expert when the first expert refused to testify a second time. Counsel also called one or two doctors himself. *Id.* Although the Sixth Circuit acknowledged that trial counsel could have done more than he did to find another expert, fairminded jurists could conclude that counsel's efforts to find an expert "fell in the permissible zone between "best practices" and outright incompetence." *Id.*

"Effective assistance does not require counsel to continue contacting experts until he found one...willing to testify against the prosecution's theory of the case." *Flick v. Warren*, 465 F. App'x 461 465 (6th Cir. 2012)(Petitioner's counsel in a second-degree murder prosecution was not ineffective for failing to call an expert to challenge the science underlying Shaken Baby Syndrome, after counsel had contacted three doctors seeking help with the case and had received unfavorable responses from all three). DeBruyn's trial counsel did consult with an expert witness, who informed counsel that he believed that the amount of oxycodone found in the victim's blood stream was sufficient to cause her death.

Secondly, although counsel did not call an expert witness, counsel were able to elicit favorable testimony from the prosecution's witnesses in support of their theory that that the level of oxycodone in Gesiakowski's blood was not extremely high and that more significant factors in her death were the likelihood of serotonin syndrome, caused by the combination of tramadol and fluoxetine, and also difluoroethane from huffing air duster.

Appendix C

“In many instances cross-examination will be sufficient to expose defects in an expert’s presentation.” *Harrington v. Richter*, 562 U.S. at 111. A defense counsel’s decision to cross-examine a prosecutor’s experts concerning their findings, instead of calling an expert witness for the defense to challenge that expert’s conclusions, has at times been held to be a reasonable trial strategy that defeats a habeas petitioner’s ineffective assistance of trial counsel claim. *See Tinsley v. Million*, 399 F.3d 796, 806 (6th Cir. 2005); *See also Jackson v. McQuiggin*, 553 F. App’x 575, 580-82 (6th Cir. 2014). Counsels’ decision to cross-examine the prosecution’s various experts, in lieu of calling an expert, is a reasonable one that defeats petitioner’s claim.

Finally, as the Michigan Court of Appeals noted, DeBruyn failed to show that he was prejudiced by counsels’ failure to call an expert witness in light of the substantial evidence against him.

In order to establish prejudice from counsel’s failure to consult with or call an expert witness, a habeas petitioner must show the “likelihood of a different result” is “substantial, not just conceivable.” *See Maze v. Lester*, 564 F. App’x 172, 183 (6th Cir. 2014).

There was no dispute that DeBruyn had supplied oxycodone to the victim in close proximity to her death by providing her Percocet pills. Although the medical examiner did not find any acetaminophen in the victim’s blood stream, he did find acetaminophen in her urine, which would tend to buttress the prosecution’s theory that the Percocet that DeBruyn gave to the victim was the source of the oxycodone found in her body. The

Appendix C

prosecution's experts gave valid reasons for why the acetaminophen might not have been found in the victim's blood stream, namely, that it metabolizes at a quicker rate than oxycodone, as well as the fact that acetaminophen could have been in the victim's blood, but at a level below that for being detected in the bloodwork. In any event, DeBruyn's proposed experts could not explain away why acetaminophen was found in the victim's urine. Again, this fact tends to buttress the prosecution's theory that the Percocet given by DeBruyn to the victim was the source of the oxycodone recovered from the victim.

Nor can DeBruyn show that he would have likely prevailed at trial by calling his proposed experts to suggest that the oxycodone was not a substantial cause of the victim's death. The defense experts' suggestion that the amount of oxycodone found in the victim would not have been fatal because the victim had developed a tolerance for that level of oxycodone due to her addiction to oxycodone would have been undercut by the fact that the victim had been in jail for over eight months where she presumably had no access to oxycodone or other opiates. There was certainly no evidence presented to the state courts or to this Court to suggest that the victim had been using opiates while incarcerated, nor was convincing evidence presented that the victim could have built up a tolerance for oxycodone in the brief time that she had been released from jail prior to her death. Indeed, DeBruyn's expert, Dr. Commissaris, conceded that he had no personal knowledge of the victim's history of drug use, particularly her use of drugs while in jail or following her release from jail.

Appendix C

With regard to suggestion that the victim's death was caused by a fatal seizure, caused by (1) serotonin syndrome, resulting from the interaction of fluoxetine and tramadol, (2) huffing difluoroethane, (3) the cessation of Keppra (antiseizure medication prescribed for the victim while in jail), or (4) some combination of these factors, there has been no showing that the victim actually suffered a seizure or had a history of seizures. Thus, DeBruyn's proposed expert's testimony would have been purely speculative.

Moreover, as the Michigan Court of Appeals noted, the evidence would need to demonstrate that the seizure was the sole cause of harm to the victim to adequately rebut the prosecutor's theory that oxycodone was a contributing cause of death. Under Michigan law, "joint mutual causes do not excuse culpable behavior." *Danielak v. Brewer*, 747 F. App'x 339, 345 (6th Cir. 2018)(Under Michigan law, sufficient evidence supported jury's finding that heroin or combination of heroin and cocaine, rather than solely cocaine, was cause of victim's death as required to support conviction of defendant who delivered heroin to victim for delivery of a controlled substance, causing death; victim died of a pulmonary edema, which was more consistent with a death caused by heroin, and not of a heart attack, which was more consistent with a death caused by cocaine). DeBruyn has failed to make this showing.

This Court concludes that the Michigan Court of Appeals' rejection of DeBruyn's ineffective assistance of counsel claim was reasonable, precluding habeas relief.

*Appendix C***IV. Conclusion**

Before DeBruyn may appeal this Court's dispositive decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R.App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). "A petitioner satisfies this standard by demonstrating that ... jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). In applying that standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at 336-37. "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254.

A habeas petitioner's ineffective assistance of counsel claim must make a substantial showing of the denial of a constitutional right so as to justify the issuance of a certificate of appealability. *See Skaggs v. Parker*, 235 F. 3d 261, 266 (6th Cir. 2000). A habeas court should grant a certificate of appealability if jurists of reason could find it debatable that trial counsel had been ineffective. *See*

Appendix C

Phillips v. Pollard, 587 F. Supp. 3d 627, 635 (E.D. Mich. 2021). Although the Court believes that it was correct in its ruling, the Court will grant a certificate of appealability to DeBruyn because jurists of reason could find it debatable that trial counsel was ineffective. *Id.*

V. ORDER

Accordingly, it is **ORDERED** that the petition for writ of habeas corpus (ECF No. 1) is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **GRANTED**.

Dated: June 28, 2024

s/ Shalina D. Kumar
Hon. Shalina D. Kumar
United States District Judge

70a

**APPENDIX D — DENIAL OF REHEARING
EN BANC OF THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT,
FILED MAY 4, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1905

SCOTT ALLEN DEBRUYN,

Petitioner-Appellant,

v.

ADAM DOUGLAS, WARDEN,

Respondent-Appellee.

ORDER

BEFORE: THAPAR, READLER, and
BLOOMEKATZ, Circuit Judges.

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 of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

71a

Appendix D

ENTERED BY ORDER OF THE COURT

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