

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

Brandon Michael Dupuis v. Kim Cargor

Case No. 4:25-CV-11656 (E.D. Mich. Mar. 4, 2026) · No. 4:25-CV-11656 · Decided March 4, 2026

SUMMARY

The United States District Court for the Eastern District of Michigan denied Brandon Michael Dupuis’s petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his Michigan convictions and the admission of surveillance footage and text messages. The court denied a certificate of appealability but granted leave to appeal in forma pauperis.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	F. Kay Behm
JURISDICTION	United States District Court for the Eastern District of Michigan, Southern Division
DECIDED	March 4, 2026
DOCKET	4:25-CV-11656
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought federal habeas relief under 28 U.S.C. § 2254 from Michigan state-court convictions following a jury trial, asserting that the trial court improperly denied lesser-included-offense instructions and improperly admitted phone records, text messages, and surveillance footage.
STANDARD OF REVIEW	Under 28 U.S.C. § 2254(d), federal habeas relief is unavailable for a claim adjudicated on the merits in state court unless the state-court decision was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court, or was based on an unreasonable determination of the facts. A state court's determination that a claim lacks merit defeats relief so long as fair-minded jurists could disagree.
PRECEDENTIAL VALUE	unpublished

TOPICS

federal habeas corpus

post-conviction relief

due process

hearsay

authentication

PRACTICE AREAS

federal habeas corpus

criminal procedure

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether the denial of lesser-included-offense jury instructions in Dupuis's noncapital Michigan prosecution violated due process and entitled him to federal habeas relief.
2. Whether the admission of surveillance footage and phone text messages, allegedly unauthenticated and containing hearsay, violated the Constitution or otherwise supported federal habeas relief.

HOLDINGS

1. The failure to instruct the jury on lesser-included offenses in this noncapital case did not present a cognizable federal habeas claim because the Supreme Court has never held that the Due Process Clause requires such an instruction in a noncapital case.
2. Claims that the state court improperly authenticated surveillance footage and text messages or admitted hearsay under Michigan evidence law are not cognizable on federal habeas review and do not entitle Dupuis to relief.
3. A certificate of appealability is denied because Dupuis failed to make a substantial showing of the denial of a constitutional right and reasonable jurists would not debate the resolution of his claims.

KEY QUOTATIONS

“Simply put, ‘the Constitution does not require a lesser-included offense instruction in non- capital cases.’”
(at 4)

“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.” (at 3)

“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.” (at 3)

FACTUAL BACKGROUND

Dupuis was convicted after a jury trial of first-degree premeditated murder and several related offenses arising from a home invasion. Evidence showed that Dupuis, Devon Jovell Knights, and Brandon Miller entered a Bay City residence through a window, that Dupuis admitted the others, took a gun and money, and shot and killed Tyler Gruber when Gruber confronted Miller. The residence contained a marijuana-growing operation, and the prosecution introduced surveillance footage and phone text-message evidence.

PROCEDURAL HISTORY

Dupuis was convicted in the Bay County Circuit Court after a jury trial of first-degree premeditated murder and related offenses. The Michigan Court of Appeals affirmed, and the Michigan Supreme Court denied leave to appeal. Dupuis then filed a federal habeas petition under 28 U.S.C. § 2254. The district court denied the petition with prejudice, denied a certificate of appealability, and granted leave to appeal in forma pauperis.

DISPOSITION

dismissed

CASES CITED

- Wagner v. Smith, 581 F.3d 410, 413 (6th Cir. 2009)
- People v. Dupuis, No. 361117, 2023 WL 9010128, at *1 (Mich. Ct. App. Dec. 28, 2023)
- McMullan v. Booker, 761 F.3d 662, 667 (6th Cir. 2014)
- Beck v. Alabama, 447 U.S. 625, 638 n.4 (1980)
- Campbell v. Coyle, 260 F.3d 531, 541 (6th Cir. 2001)
- Bagby v. Sowders, 894 F.2d 792, 795-97 (6th Cir. 1990) (en banc)
- Taylor v. Withrow, 288 F.3d 846, 849 (6th Cir. 2002)
- Scott v. Elo, 302 F.3d 598, 606 (6th Cir. 2002)
- Dansby v. Trombley, 369 F. App'x 657, 660 (6th Cir. 2010)
- Tegeler v. Renico, 253 F. App'x 521, 524-25 (6th Cir. 2007)
- Creel v. Johnson, 162 F.3d 385, 390 (5th Cir. 1998)
- Pitts v. Lockhart, 911 F.2d 109, 112 (8th Cir. 1990)
- Rembert v. Dugger, 842 F.2d 301, 303 (11th Cir. 1988)
- Trujillo v. Sullivan, 815 F.2d 597, 602 (10th Cir. 1987)
- Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)
- Seymour v. Walker, 224 F.3d 542, 552 (6th Cir. 2000)
- Hennis v. Warden, Chillicothe Corr. Inst., 886 F. Supp. 2d 797, 807 (S.D. Ohio 2012)
- Dickens v. Chapman, No. 19-1945, 2020 WL 832900, at *2 (6th Cir. Jan. 15, 2020)
- Byrd v. Tessmer, 82 F. App'x 147, 150 (6th Cir. 2003)
- Rhea v. Jones, 622 F. Supp. 2d 562, 589 (W.D. Mich. 2008)
- Cathron v. Jones, 190 F. Supp. 2d 990, 996 (E.D. Mich. 2002)
- Williams v. Taylor, 529 U.S. 362, 405-06, 409-11 (2000)
- Harrington v. Richter, 562 U.S. 86, 101, 103 (2011)
- Dell v. Straub, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002)
- Foster v. Ludwick, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN
DIVISION BRANDON MICHAEL DUPUIS, Petitioner, Case No. 4:25-CV-11656 Honorable F.
Kay Behm v. United States District Judge KIM CARGOR, Respondent,
_____/ OPINION AND ORDER DENYING THE PETITION
FOR WRIT OF HABEAS CORPUS, DECLINING TO ISSUE A CERTIFICATE OF
APPEALABILITY, AND GRANTING LEAVE TO APPEAL IN FORMA PAUPERIS Brandon
Michael Dupuis (“Petitioner”), filed a pro se petition for writ of habeas corpus pursuant to 28
U.S.C. § 2254, challenging his convictions for of first-degree premeditated murder, armed robbery,
conspiracy to commit armed robbery, first-degree home invasion, conspiracy to commit first-
degree home invasion, felon-in-possession of a firearm, and four counts of possession of a firearm
in the commission of a felony (felony firearm).

For the reasons stated below, the petition for writ of habeas corpus is DENIED WITH
PREJUDICE. I. Background Petitioner was convicted following a jury trial in the Bay County
Circuit Court. His co-defendant Devon Jovell Knights was convicted by a separate jury. This
Court recites verbatim the relevant facts relied upon by the Michigan Court of Appeals, which are
presumed correct on habeas review pursuant to 28 U.S.C. § 2254(e)(1).

See *Wagner v. Smith*, 581 F.3d 410, 413 (6th Cir. 2009): The convictions arose from a home
invasion by Dupuis, Knights, and a man named Brandon Miller. The prosecutor produced
evidence, including surveillance-camera video footage, that Dupuis entered a home in Bay City
through a window, let Knights and Miller inside, took a gun and money from a kitchen drawer, and
shot and killed Tyler Gruber (Tyler), who lived in the home, when Tyler confronted Miller.

Miller was also hit by a bullet. The residence housed a marijuana grow operation. Knights’ jury
was given instructions on aiding and abetting. Defendants were convicted and sentenced as
previously stated, and they now appeal as of right. *People v. Dupuis*, No. 361117, 2023 WL
9010128, at *1 (Mich. Ct. App. Dec. 28, 2023); lv. den. 513 Mich. 1111, 6 N.W.3d 381 (2024).

Petitioner seeks a writ of habeas corpus on the following grounds: I. Petitioner was denied his
constitutional right to a fair trial when the trial court denied his request for lesser included
offenses. U.S. Const., Am. XIV. II. Petitioner was denied his constitutional right to a fair trial
when the trial court reversibly erred in admitting phone records and surveillance footage.

II. Standard of Review Title 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 (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 (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 (2011).

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. III. Discussion A. Claim # 1.

The lesser included offenses instruction claim. Petitioner first argues that he was denied due process and the right to a fair trial when the trial court refused to instruct the jury on lesser included offenses on several of the charges he was facing and ultimately convicted of, including the most serious charge of open murder, for which Petitioner was convicted of first-degree premeditated murder.

1 Petitioner’s claim is non-cognizable on federal habeas review. “[T]he Supreme Court...has never held that the Due Process Clause requires instructing the jury on a lesser included offense in a non-capital case.” *McMullan v. Booker*, 761 F.3d 662, 667 (6th Cir. 2014) (citing to *Beck v. Alabama*, 447 U.S. 625, 638, n. 4 (1980)). “Simply put, ‘the Constitution does not require a lesser-included offense instruction in non-capital cases.’” *Id.* (quoting *Campbell v. Coyle*, 260 F.3d 531, 541 (6th Cir.

2001) (citing *Bagby v. Sowders*, 894 F.2d 792, 795–97 (6th Cir.1990) (en banc)). “Because the Supreme Court has never held that due process requires lesser-included-offense instructions in a non- capital case, [Petitioner’s] claim rests on no such federal ground.” *Id.* Thus, the failure of a state trial court to instruct a jury on a lesser included offense in a non-capital case is not an error cognizable in federal habeas review.

Bagby v. Sowders, 894 F.2d at 797; See also *Scott v. Elo*, 302 F.3d 598, 606 (6th Cir. 2002). 1 Under Michigan law, it is proper to charge a defendant with the crime of open murder. Such a

charge gives a circuit court jurisdiction to try a defendant on first and second-degree murder charges. See *Taylor v. Withrow*, 288 F.3d 846, 849 (6th Cir. 2002).

Moreover, although Petitioner was convicted of first-degree murder, which carries a mandatory nonparolable life sentence, this offense would nonetheless be considered a non-capital offense for purposes of *Beck*. In *Scott v. Elo*, 302 F.3d at 606, the Sixth Circuit held that a criminal defendant who had been convicted of first-degree murder in Michigan and had been sentenced to life imprisonment without parole was not entitled to habeas relief based upon the trial court's failure to instruct on the lesser offense of involuntary manslaughter.

In so ruling, the Sixth Circuit characterized the defendant's first-degree murder charge as being a conviction for a non-capital offense. *Id.*, see also *Dansby v. Trombley*, 369 F. App'x 657, 660 (6th Cir. 2010) (trial court's failure to provide jury instructions on lesser-included offenses in petitioner's trial for noncapital murder charges was outside the purview of the AEDPA's habeas provision, as the Supreme Court had never held that due process required the giving of jury instructions on lesser-included offenses in noncapital cases); *Tegeler v. Renico*, 253 F. App'x 521, 524-25 (6th Cir.

2007) (Due process did not require jury instruction on the lesser-included offense of voluntary manslaughter in non-capital prosecution for first-degree premeditated murder). Moreover, several other circuits have concluded that cases in which a defendant receives a sentence of life imprisonment without parole instead of the death penalty should be treated as a non-capital case, as opposed to a capital case, for determining whether due process requires that a trial court is required to instruct jurors on lesser included offenses.

Creel v. Johnson, 162 F.3d 385, 390 (5th Cir. 1998); *Pitts v. Lockhart*, 911 F.2d 109, 112 (8th Cir. 1990); *Rembert v. Dugger*, 842 F. 2d 301, 303 (11th Cir. 1988); *Trujillo v. Sullivan*, 815 F. 2d 597, 602 (10th Cir. 1987). Petitioner is not entitled to habeas relief on his first claim. B. Claim # 2.

The admission of evidence claim. Petitioner next argues that the surveillance footage from the victim's home-security system and certain text messages from Petitioner's telephone should not have been admitted into evidence because they were not authenticated and the text messages constituted inadmissible hearsay. It is "not the province of a federal habeas court to reexamine state- court determinations on state-court questions." *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991).

A federal court is limited in federal habeas review to deciding whether a state court conviction violates the Constitution, laws, or treaties of the United States. *Id.* Thus, errors in the application of state law, especially rulings regarding the admissibility of evidence, are usually not questioned by a federal habeas court. *Seymour v. Walker*, 224 F.3d 542, 552 (6th Cir.

2000). Petitioner's claim that the surveillance videotapes and text messages were not properly authenticated under Michigan evidence law is not a cognizable habeas corpus claim. See *Hennis v. Warden, Chillicothe Corr. Inst.*, 886 F. Supp. 2d 797, 807 (S.D. Ohio 2012); See also *Dickens v. Chapman*, No. 19-1945, 2020 WL 832900, at *2 (6th Cir. Jan. 15, 2020) (denying certificate of appealability after district court denied habeas relief on petitioner's claim that the prosecutor had admitted unauthenticated evidence; "Dickens's claim does not deserve encouragement to proceed under that theory because the Supreme Court has not established that questions of authenticity implicate due process.").

Petitioner's claim that the text messages contained hearsay evidence would also not entitle him to habeas relief. The admissibility of evidence under Michigan's hearsay rules is not cognizable in a habeas corpus proceeding. See *Byrd v. Tessmer*, 82 F. App'x 147, 150 (6th Cir. 2003); See also *Rhea v. Jones*, 622 F. Supp. 2d 562, 589 (W.D. Mich. 2008); *Cathron v. Jones*, 190 F. Supp. 2d 990, 996 (E.D.

Mich. 2002). The admission of this evidence in violation of Michigan's rules of evidence would not entitle petitioner to relief. Petitioner is not entitled to relief on his second claim. IV. Conclusion Before Petitioner 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 (2000). "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.

For the reasons stated in this opinion, the Court will deny Petitioner a certificate of appealability because he has failed to make a substantial showing of the denial of a federal constitutional right. See *Dell v. Straub*, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002).

However, although jurists of reason would not debate this Court's resolution of Petitioner's claims, the issues are not frivolous; therefore, an appeal could be taken in good faith and Petitioner may proceed in forma pauperis on appeal. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002).

V. ORDER Based upon the foregoing, IT IS ORDERED that: (1) the petition for writ of habeas corpus is DENIED WITH PREJUDICE. (2) A certificate of appealability is DENIED. (3)

Petitioner will be GRANTED leave to appeal in forma pauperis. SO ORDERED. Dated: March 4, 2026 s/F. Kay Behm F. Kay Behm United States District Judge

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