

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

Michael L. Larr v. Warden Misty Mackey

Larr · No. 2:24-cv-1730 · Decided February 27, 2026

SUMMARY

The United States District Court for the Southern District of Ohio overruled Michael L. Larr’s objections to the Magistrate Judge’s Report and Recommendations and adopted the recommendation to dismiss his habeas petition with prejudice. The court rejected challenges concerning jurisdiction, AEDPA deference, probable cause for arrest, sufficiency of the evidence, the Confrontation Clause, hearsay, and procedural default. The court denied a certificate of appealability and certified that an appeal would be objectively frivolous for purposes of proceeding in forma pauperis.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Eastern Division
WRITING FOR THE COURT	Michael H. Watson
JURISDICTION	United States District Court for the Southern District of Ohio, Eastern Division
DECIDED	February 27, 2026
DOCKET	2:24-cv-1730
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought federal habeas corpus relief under 28 U.S.C. § 2254 and objected to a magistrate judge's Report and Recommendations recommending dismissal with prejudice. The district court reviewed the properly objected-to portions de novo, overruled the objections, adopted the Report and Recommendations, entered judgment for the respondent, denied a certificate of appealability, and certified that an appeal would be objectively frivolous for purposes of proceeding in forma pauperis.
STANDARD OF REVIEW	The court reviewed the objected-to portions of the Report and Recommendations de novo under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). On the merits of claims adjudicated by the state courts, the court applied AEDPA deference under 28 U.S.C. § 2254(d)(1), including the twice-deferential standard applicable to

sufficiency-of-the-evidence claims. The court reviewed procedural-default determinations based on the state record.

PRECEDENTIAL VALUE

Unpublished, nonprecedential federal district court opinion

TOPICS

federal habeas corpus

appellate jurisdiction

standard of review

hearsay

probable cause

PRACTICE AREAS

Federal habeas corpus

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the pendency of Larr's appeal concerning a bond request deprived the district court of jurisdiction to decide the merits of his habeas petition.
2. Whether the district court was required to review Larr's constitutional claims de novo because the Ohio Supreme Court declined jurisdiction.
3. Whether Larr's alleged arrest without probable cause was cognizable in federal habeas proceedings or established actual innocence sufficient to overcome procedural default.
4. Whether the Ohio appellate court's determination that sufficient evidence supported Larr's gross-sexual-imposition convictions was contrary to or an unreasonable application of clearly established Supreme Court precedent under AEDPA.
5. Whether claims concerning the admission of the child's statements were procedurally defaulted where Larr failed to make a contemporaneous evidentiary objection.
6. Whether the Ohio appellate court's determination that the child's statements were nontestimonial and admissible under a medical-diagnosis exception was contrary to or an unreasonable application of clearly established Supreme Court Confrontation Clause precedent.
7. Whether the child's use of terminology allegedly not unexpected for a child of her age rendered her statements unreliable and inadmissible hearsay.

HOLDINGS

1. A notice of appeal concerning only a bond request did not transfer jurisdiction over the entire habeas case or prevent the district court from deciding the merits of the habeas petition.
2. The federal habeas court must review the last state-court decision adjudicating the constitutional issue on the merits and may not disregard lower state-court decisions merely because the state supreme court declined jurisdiction.
3. An alleged arrest without probable cause, standing alone and without an unlawful seizure of evidence affecting the conviction, is not a basis for federal habeas relief after indictment and conviction.
4. The Ohio appellate court's conclusion that sufficient evidence supported Larr's convictions was neither contrary to nor an unreasonable application of clearly established Supreme Court precedent.

5. Claims concerning testimony by the victim's mother and petitioner's wife were procedurally defaulted because the record showed no contemporaneous evidentiary objection and the state appellate court did not review those claims for plain error.
6. The state appellate court's determination that the child's statements were not testimonial because the interview was conducted primarily for medical diagnosis and treatment was not contrary to or an unreasonable application of clearly established Supreme Court precedent.
7. The child's use of terminology allegedly not unexpected for a child of her age did not establish that the statements were inadmissible hearsay or that the state court unreasonably applied clearly established Supreme Court law.
8. Because reasonable jurists would not disagree with the disposition, the petitioner was denied a certificate of appealability, and the court certified that an appeal would be objectively frivolous for purposes of proceeding in forma pauperis.

KEY QUOTATIONS

"An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction." (Page 5)

"In a sufficiency-of-the-evidence habeas corpus case, deference should be given to the trier-of-fact's verdict under Jackson v. Virginia, 443 U.S. 307 (1979), and then to the appellate court's consideration of that verdict, as commanded by AEDPA." (Page 9)

"The existence vel non of an ongoing emergency is not the touchstone of the testimonial inquiry." (Page 14)

FACTUAL BACKGROUND

Larr was convicted in Ohio of gross sexual imposition involving a child who was under thirteen. The state-court record included statements by the child that Larr touched or tickled her vaginal area, testimony from other witnesses, and a recorded forensic interview. The Ohio appellate court concluded that, viewed in the light most favorable to the prosecution, the evidence was sufficient for a rational factfinder to find the elements of the offense beyond a reasonable doubt. Larr also challenged the legality of his arrest and the admission of the child's out-of-court statements.

PROCEDURAL HISTORY

The Ohio Fifth District Court of Appeals affirmed Larr's convictions for gross sexual imposition based on sufficiency-of-the-evidence and related claims. The Ohio Supreme Court declined jurisdiction. Larr then filed a federal habeas petition, and Magistrate Judge Merz recommended dismissal with prejudice. The district court rejected Larr's objections concerning jurisdiction, AEDPA deference, probable cause, sufficiency of the evidence, procedural default, hearsay, and the Confrontation Clause, and terminated the case.

DISPOSITION

dismissed

CASES CITED

- *Marrese v. American Academy of Osteopathic Surgeons*, 470 U.S. 373, 379 (1985)
- *United States v. Crews*, 445 U.S. 463, 474 (1980)
- *Brown v. Konteh*, 567 F.3d 191, 204-05 (6th Cir. 2009)
- *Parker v. Matthews*, 567 U.S. 37, 43 (2012) (per curiam)
- *Jackson v. Virginia*, 443 U.S. 307 (1979)
- *Tucker v. Palmer*, 541 F.3d 652, 656 (6th Cir. 2008)
- *Davis v. Lafler*, 658 F.3d 525, 531 (6th Cir. 2011) (en banc)
- *Williams v. Taylor*, 529 U.S. 362, 412 (2000)
- *Crawford v. Washington*, 541 U.S. 36 (2004)
- *Davis v. Washington*, 547 U.S. 813 (2006)
- *Ohio v. Clark*, 576 U.S. 237, 244-49 (2015)
- *Ohio v. Roberts*, 448 U.S. 56 (1980)
- *Idaho v. Wright*, 497 U.S. 805 (1990)
- *Gaston v. Brigano*, 208 F. App'x 376 (6th Cir. 2006)
- *State v. Walker*, 150 Ohio St. 3d 409, 2016-Ohio-8295, 82 N.E.3d 1124
- *State v. Richardson*, 150 Ohio St. 3d 554, 2016-Ohio-8448, 84 N.E.3d 993
- *State v. Jenks*, 61 Ohio St. 3d 259, 574 N.E.2d 492 (1991)
- *State v. Poutney*, 153 Ohio St. 3d 474, 2018-Ohio-22, 97 N.E.3d 478
- *State v. Murphy*, 91 Ohio St. 3d 516, 543, 747 N.E.2d 765 (2001)
- *State v. Ketterer*, 111 Ohio St. 3d 70, 2006-Ohio-5283, 855 N.E.2d 48
- *State v. Dennis*, 79 Ohio St. 3d 421, 430, 683 N.E.2d 1096 (1997)
- *State v. Montgomery*, 148 Ohio St. 3d 347, 2016-Ohio-5487, 71 N.E.3d 180
- *State v. Smith*, 80 Ohio St. 3d 89, 102 n.4, 684 N.E.2d 668 (1997)
- *State v. Cochran*, 5th Dist. Coshocton No. 03-CA-01, 2003-Ohio-6863
- *State v. Mundy*, 99 Ohio App. 3d 275, 289, 650 N.E.2d 502 (1994)
- *State v. Dunn*, 5th Dist. Stark No. 2008-CA-00137, 2009-Ohio-1688
- *State v. Thomas*, 70 Ohio St. 2d 79, 434 N.E.2d 1356 (1982)