

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

Marko Larcharr McGee v. Jeff Tanner

No. 2:25-CV-10414-TGB-APP · No. No. 2:25-CV-10414-TGB-APP · Decided February 26, 2026

SUMMARY

The United States District Court for the Eastern District of Michigan denied Marko Larcharr McGee’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court held that the exclusion of a Facebook message concerning the victim’s alleged intent was not an unreasonable application of clearly established federal law and that McGee’s prosecutorial-misconduct claim was procedurally defaulted. The court denied the petition with prejudice and denied a certificate of appealability.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	Terrence G. Berg
JURISDICTION	United States District Court for the Eastern District of Michigan, Southern Division
DECIDED	February 26, 2026
DOCKET	No. 2:25-CV-10414-TGB-APP
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for a writ of habeas corpus under 28 U.S.C. § 2254 following a Michigan state-court jury conviction and affirmance on direct appeal.
STANDARD OF REVIEW	Under 28 U.S.C. § 2254(d), federal habeas relief is unavailable for claims adjudicated on the merits in state court unless the state decision was contrary to, or involved an unreasonable application of, clearly established Supreme Court law, or was based on an unreasonable determination of the facts. State factual findings are presumed correct under 28 U.S.C. § 2254(e)(1). Procedurally defaulted claims are barred absent cause and actual prejudice or a fundamental miscarriage of justice.
PRECEDENTIAL VALUE	Unpublished district-court opinion; persuasive value only

PARTIES

Marko Larcharr McGee v. Jeff Tanner

TOPICS

federal habeas corpus

post-conviction relief

evidence

due process

prosecutorial misconduct

PRACTICE AREAS

federal habeas corpus

criminal procedure

constitutional law

evidence

prosecutorial misconduct

QUESTIONS PRESENTED

1. Whether exclusion of the Facebook message violated McGee's federal constitutional right to present a complete defense.
2. Whether the prosecutor committed misconduct by repeatedly referring to McGee's prior assault conviction in proving the felon-in-possession charge.
3. Whether the prosecutorial-misconduct claim was procedurally defaulted because McGee failed to object at trial and failed to exhaust an ineffective-assistance claim as cause.
4. Whether McGee was entitled to a certificate of appealability.

HOLDINGS

1. The exclusion of the Facebook message did not violate McGee's constitutional right to present a complete defense because the evidence was unreliable, multilayered hearsay and its exclusion was neither arbitrary nor disproportionate to the legitimate interest in enforcing evidentiary rules.
2. The prosecutorial-misconduct claim was procedurally defaulted because McGee failed to make a contemporaneous objection, the Michigan Court of Appeals relied on that failure, and McGee did not establish cause, prejudice, or actual innocence to excuse the default.
3. A certificate of appealability was denied because reasonable jurists would not debate the district court's conclusion that McGee was not entitled to habeas relief.

KEY QUOTATIONS

“Trial court errors in state procedure or evidentiary law do not rise to the level of federal constitutional claims warranting relief in a habeas action, unless the error renders the proceeding so fundamentally unfair as to deprive the petitioner of due process under the Fourteenth Amendment.” (8)

“The exclusion of defense evidence violates a defendant’s constitutional right to present a defense only where it is ‘arbitrary’ or ‘disproportionate’; that is, where ‘important defense evidence’ is excluded without serving ‘any legitimate interests’ or in a manner that is ‘disproportionate to the ends that [the rationale for exclusion is] asserted to promote.’” (9)

“The miscarriage of justice exception requires a showing that a constitutional violation probably resulted in the conviction of one who is actually innocent.” (15)

FACTUAL BACKGROUND

McGee was convicted after a jury trial of killing Diabulo White and related firearm, weapons, and resisting-arrest offenses. McGee testified that White confronted him at his doorway, attacked him with a gun and hammer, and that McGee struck White in self-defense; afterward, McGee moved White's body and vehicle and gave police several differing accounts before confessing that he acted in self-defense. At trial, the court excluded a Facebook message reporting that White had planned to kill McGee because the message contained multiple layers of hearsay and lacked a reliable foundation. The prosecution also introduced McGee's 1994 conviction for assault with intent to do great bodily harm to establish the felon-in-possession charge.

PROCEDURAL HISTORY

McGee was convicted in the Calhoun County Circuit Court of first-degree murder and several firearm, weapons, and resisting-arrest offenses, and received a mandatory life sentence for murder. The Michigan Court of Appeals affirmed, and the Michigan Supreme Court denied leave to appeal. McGee then filed this federal habeas petition without pursuing state collateral review. The district court denied the petition with prejudice and denied a certificate of appealability.

DISPOSITION

dismissed

CASES CITED

- *Wagner v. Smith*, 581 F.3d 410, 413 (6th Cir. 2009)
- *People v. McGee*, No. 363282, 2023 WL 9015109 (Mich. Ct. App. Dec. 28, 2023)
- *People v. McGee*, 5 N.W.3d 38 (Mich. 2024) (Table)
- *Williams v. Taylor*, 529 U.S. 362, 405-11 (2000)
- *Harrington v. Richter*, 562 U.S. 86, 101 (2011)
- *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)
- *Jackson v. Smith*, 745 F.3d 206, 214 (6th Cir. 2014)
- *McAdoo v. Elo*, 365 F.3d 487, 494 (6th Cir. 2004)
- *Loza v. Mitchell*, 766 F.3d 466, 485 (6th Cir. 2014)
- *United States v. Reichert*, 747 F.3d 445, 453 (6th Cir. 2014)
- *Holmes v. South Carolina*, 547 U.S. 319, 324-27 (2006)
- *United States v. Blackwell*, 459 F.3d 739, 753 (6th Cir. 2006)
- *United States v. Humphrey*, 608 F.3d 955, 962 n. 3 (6th Cir. 2010)
- *Ferensic v. Birkett*, 501 F.3d 469, 475-76 (6th Cir. 2007)
- *United States v. Winters*, 33 F.3d 720, 723 (6th Cir. 1994)
- *United States v. Hathaway*, 798 F.2d 902, 905 (6th Cir. 1986)
- *Anderson v. United States*, 417 U.S. 211, 219 (1974)
- *Mack v. Bradshaw*, 88 F.4th 1147, 1162 (6th Cir. 2023)

- Turpin v. Kassulke, 26 F.3d 1392, 1398 (6th Cir. 1994)
- McCullough v. Stegall, 17 F. App'x 292, 295 (6th Cir. 2001)
- Durr v. Burt, No. 16-10628, 2018 WL 6727046, at *7 (E.D. Mich. Dec. 21, 2018)
- People v. Clark, 948 N.W.2d 604, 629 (Mich. Ct. App. 2019)
- Wainwright v. Sykes, 433 U.S. 72, 85-87 (1977)
- White v. Mitchell, 431 F.3d 517, 524 (6th Cir. 2006)
- People v. Carines, 597 N.W.2d 130, 139 (Mich. 1999)
- Coleman v. Mitchell, 244 F.3d 533, 539 (6th Cir. 2001)
- Howard v. Bouchard, 405 F.3d 459, 477 (6th Cir. 2005)
- Paprocki v. Foltz, 869 F.2d 281, 285 (6th Cir. 1989)
- Girts v. Yanai, 501 F.3d 743, 755 (6th Cir. 2007)
- Hinkle v. Randle, 271 F.3d 239, 244 (6th Cir. 2001)
- Seymour v. Walker, 224 F.3d 542, 557 (6th Cir. 2000)
- Gravley v. Mills, 87 F.3d 779, 784-85 (6th Cir. 1996)
- Murray v. Carrier, 477 U.S. 478, 488 (1986)
- McCleskey v. Zant, 499 U.S. 467, 493-94 (1991)
- Edwards v. Carpenter, 529 U.S. 446, 450-51 (2000)
- Smith v. Murray, 477 U.S. 527, 533 (1986)
- Murray v. Carrier, 477 U.S. 479-80 (1986)
- Schlup v. Delo, 513 U.S. 298, 324 (1995)
- Bousley v. United States, 523 U.S. 614, 623 (1998)
- Slack v. McDaniel, 529 U.S. 473, 483-84 (2000)
- Castro v. United States, 310 F.3d 900, 901 (6th Cir. 2002)

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