No. 24-1164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BELINDA JONES,

Petitioner-Appellant,

v.

JEREMY HOWARD, Warden,

Respondent-Appellee.

ORDER

Before: McKEAGUE, Circuit Judge.

Belinda Jones, a pro se state prisoner, appeals from the district court judgment denying her petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Jones applies for a certificate of appealability (COA). Jones also moves to exceed the page limit for her COA application. As explained below, we grant the motion and deny the application.

Jones stabbed James Williams to death. Jones first told the police that unknown assailants attacked Williams. Jones later told the police that she stabbed Williams because she believed he had a knife in his waistband. At trial, Jones testified that she was acting in defense of her son when she stabbed Williams, who was fighting her son. The trial court instructed the jury on self-defense and defense of others. The jury convicted Jones of second-degree murder. The trial court sentenced Jones to 16 to 35 years in prison. The Michigan Court of Appeals affirmed Jones's conviction and sentence. *People v. Jones*, No. 330113, 2017 WL 3613902, at *1 (Mich. Ct. App. Aug. 22, 2017). The Michigan Supreme Court declined jurisdiction. *People v. Jones*, 910 N.W.2d 278 (Mich. 2018) (mem.).

Jones unsuccessfully moved for relief from judgment. The Michigan Court of Appeals and Michigan Supreme Court denied her leave to appeal.

Jones filed an amended § 2254 petition. The warden filed a response. The district court held that Jones did not satisfy the standards of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), denied relief, and did not grant a COA.

Jones now seeks a COA for claims asserting that the state court should have considered her mental disability and suppressed her statement to the police, the prosecutor knowingly presented false evidence by an expert witness, trial counsel was ineffective for failing to challenge or expose the false testimony, and the state court did not provide a remedy for a violation of Michigan Compiled Laws § 780.961. Because she does not mention her claim that counsel performed ineffectively by failing to move for a new trial on the ground that the verdict was against the great weight of the evidence, that claim is forfeited. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002).

A state prisoner must obtain a COA to appeal from the denial of § 2254 relief, which requires making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). A substantial showing is made where the applicant demonstrates that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

Under the AEDPA, a district court shall not grant a habeas petition with respect to any claim that was adjudicated on the merits in the state courts unless the adjudication resulted in a decision that was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). Where the state courts adjudicated the petitioner's claims on the merits, the relevant question is whether the district court's application of § 2254(d) to those claims is debatable by jurists of reason. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2002).

Suppression of Jones's statement to the police

Jones first argues that the trial court should have suppressed her statement to the police because she is intellectually disabled.

On direct appeal, the Michigan Court of Appeals denied this claim, explaining that Jones's statement was admissible without her being issued warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966), because, under the totality of the circumstances, she was not in custody. *Jones*, 2017 WL 3613902, at *1-2. The Michigan Court of Appeals stated that Jones's intellectual disability was "not a relevant consideration" because the trial court did not know about it at the time of the suppression hearing, and Jones failed to show either that the police knew or had reason to know about her intellectual disability or that it impaired her ability to understand what was happening. *Id.* at *2.

On habeas review, the district court determined that the state court opinion was not an unreasonable determination of the facts or contrary to, or an unreasonable application of, Supreme Court precedent.

"[P]olice must issue *Miranda* warnings before interrogating a suspect in their custody." *United States v. Lester*, 98 F.4th 768, 773 (6th Cir. 2024). To determine whether an individual is in custody, we must consider the purpose of the questioning, the location of the questioning, the duration of the questioning, whether the individual was free to leave, whether the individual possessed freedom of movement, and whether the individual was told that answering the questions was not required. *United States v. Panak*, 552 F.3d 462, 465 (6th Cir. 2009).

Here, the police contacted Jones to arrange a meeting, and she agreed to meet at a fast-food restaurant. *Jones*, 2017 WL 3613902, at *2. Jones arrived at the meeting without police assistance, approached the unmarked, standard-issue police car without prompting, and was interviewed through an open car window. *Id.* After the interview, Jones agreed to provide a written statement and accepted the invitation to sit in the police car, which could be opened from the inside. *Id.* Jones wrote her statement without interruption from the police and exited the police car. *Id.* The encounter lasted "no more than an hour," and Jones was not handcuffed or told she was under

arrest. *Id.* The totality of the circumstances indicated that the police did not have Jones in custody, so the police were not required to issue *Miranda* warnings. *See United States v. Zabel*, 35 F.4th 493, 502-03 (6th Cir. 2022). No clearly established Supreme Court precedent holds that a defendant's intellectual disability is relevant to the *Miranda* "in custody" determination. Reasonable jurists would not find the district court's decision debatable or wrong.

The prosecutor's presentation of false testimony

Jones argues that the prosecution knowingly presented false testimony by the medical examiner that Williams was stabbed seven times rather than the three times reflected by the autopsy report and photographs.

On post-conviction review, the state court denied relief because the number of stab wounds was not a significant factor in determining whether Jones acted in self-defense or in defense of others.

On habeas review, the district court determined that the state court's decision was reasonable because Jones could not demonstrate a likelihood that different testimony would have affected the verdict.

"[T]he prosecution in a criminal case 'may not knowingly use false evidence, including false testimony, to obtain a tainted conviction.'" *McNeill v. Bagley*, 10 F.4th 588, 604 (6th Cir. 2021) (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). To prove this claim, Jones must show that "the statement was actually false," "the statement was material," and "the prosecution knew it was false." *Rosencrantz v. Lafler*, 568 F.3d 577, 583-84 (6th Cir. 2009).

At a subsequent trial of Jones's co-defendant, the medical examiner testified that Williams suffered three, not seven, stab wounds, explaining that she mistakenly counted chest tube wounds as stab wounds in preparing for Jones's trial. Jones cannot satisfy the materiality requirement because the medical examiner reiterated that stab wounds were the cause of Williams's death. No evidence contradicted the medical examiner's conclusion at Jones's trial that stab wounds caused Williams's death. *Jones*, 2017 WL 3613902, at *7. Further, Jones stabbed Williams after he had been assaulted and disarmed by several men, demonstrating Jones's intent and undermining her

theory of self-defense. *Id.* at *4. Nor can Jones show that the prosecutor knew the testimony to be false. The medical examiner explained that the mistake was discovered by conducting further review of Williams's medical records. Jones has not shown a *Napue* violation. *See Brooks v. Tennessee*, 626 F.3d 878, 895-96 (6th Cir. 2010). Reasonable jurists would not find the district court's decision debatable or wrong.

Trial counsel's failure to challenge false testimony

Jones argues that trial counsel was ineffective because counsel did not review the medical records and retain expert assistance to challenge the medical examiner's false testimony.

The Michigan Court of Appeals considered and denied only the expert-assistance portion of this claim, explaining that Jones provided no evidence that Williams died from something other than the stab wounds. *Jones*, 2017 WL 3613902, at *7.

On habeas review, the warden argued that this claim was procedurally defaulted and, alternatively, lacked merit. The district court addressed only the claim's merits and denied relief, explaining that Jones could not show that the medical examiner testified falsely and that Jones did not show that an expert would have provided another cause of death.

Jones "must show that his counsel provided 'deficient' performance that 'prejudiced the defense.'" *Shinn v. Kayer*, 592 U.S. 111, 117 (2020) (per curiam) (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Concerning counsel's performance, Jones "must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). Prejudice requires showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

Jones cannot show deficient performance. Trial counsel averred in an affidavit that, had the autopsy report, the related diagram, and the medical examiner's sworn testimony reflected that Williams was stabbed three times and not seven, he would have argued that three stab wounds better supported the theory that the stabbing occurred in the heat of the moment. Notwithstanding

the affidavit, Jones has failed to "identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Id.* at 690.

Assuming that Jones can overcome the presumption that trial counsel strategically decided not to retain expert assistance, Jones cannot show prejudice. On direct appeal, the Michigan Court of Appeals stated that Jones "does not point to any evidence to contradict the medical examiner's conclusion that the victim died from stab wounds." *Jones*, 2017 WL 3613902, at *7. At the co-defendant's trial, the medical examiner clarified that Williams was stabbed three times and died from those wounds. Because the cause of death remains the same regardless of the number of stab wounds, Jones cannot show prejudice. Reasonable jurists would not find the district court's decision debatable or wrong.

Remedies for state-law violations

Jones argues that the state court did not provide a remedy for a violation of Michigan Compiled Laws § 780.961. Under that statute, the prosecution shall present evidence that a defendant's actions were not justified and did not constitute self-defense at the time of the warrant issuance, preliminary examination, and trial. Mich. Comp. Laws § 780.961(2).

On direct appeal, the Michigan Court of Appeals denied relief, stating that, while no remedy existed for the prosecutor's failure to present such evidence when the judge issued the warrant, the prosecutor presented that evidence at trial, and the jury rejected Jones's claim of self-defense. *Jones*, 2017 WL 3613902, at *6.

On habeas review, the district court determined that Jones did not show a due process violation arising from a state-law error and denied relief.

"[A] state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus." *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (per curiam). Here, the Michigan Court of Appeals found no error arising from the prosecutor's failure to strictly adhere to statutory requirements. *Jones*, 2017 WL 3613902, at *6. Reasonable jurists would not find the district court's decision debatable or wrong.

For the foregoing reasons, we **DENY** Jones's COA application. Jones's motion for permission to exceed the page limit is **GRANTED**.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 07/23/2024.

Case Name: Belinda Jones v. Jeremy Howard
Case Number: 24-1164

Docket Text:
ORDER filed : We DENY Jones's COA application. Jones's motion for permission to exceed the page limit is GRANTED. David W. McKeague, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Ms. Belinda Jones
Huron Valley Complex - Women
3201 Bemis Road
Ypsilanti, MI 48197

A copy of this notice will be issued to:

Ms. Andrea M. Christensen-Brown
Ms. Kinikia D. Essix

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1164

BELINDA JONES,

Petitioner-Appellant,

v.

JEREMY HOWARD, Warden,

Respondent-Appellee.

Before: McKEAGUE, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Belinda Jones for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BELINDA JONES,

Petitioner,

Case No. 22-cv-11237
Honorable Linda V. Parker

v.

JEREMY HOWARD,

Respondent,

_____/

OPINION AND ORDER DENYING THE PETITION FOR WRIT OF HABEAS CORPUS, DENYING A CERTIFICATE OF APPEALABILITY, AND GRANTING LEAVE TO APPEAL IN FORMA PAUPERIS

Petitioner Belinda Jones ("Petitioner"), confined at the Huron Valley Women's Complex in Ypsilanti, Michigan, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges her state-court conviction for second-degree murder in violation of Michigan Compiled Laws § 750.317. For the reasons that follow, the Court is denying the petition, declining to issue a certificate of appealability, but granting Petitioner leave to appeal in forma pauperis.

I. BACKGROUND

Petitioner originally was charged with assault with intent to commit murder. When the victim died after being hospitalized for more than two weeks, the charges were elevated to second-degree murder.

Petitioner subsequently was found guilty of the charge by a jury in the Circuit Court for Macomb County, Michigan. This Court recites verbatim the relevant facts relied upon by the Michigan Court of Appeals:

> Defendant's conviction arises from the stabbing death of James Williams. At trial, defendant testified that she was acting in defense of her son, who was fighting with Williams, and that she stabbed Williams as he was reaching for a knife. However, defendant gave inconsistent statements to the police before trial, claiming first that Williams had been attacked by several men whom she did not know, and later that she stabbed Williams because she had seen, or at least thought she saw, a knife in his waistband. The trial court instructed the jury on both self-defense and defense of others, but the jury found defendant guilty, as charged, of second-degree murder.
>
> * * *
>
> The evidence, when viewed in a light most favorable to the prosecution, showed that Williams was irate over having been robbed and was looking for the people who had robbed him to get his money back. He armed himself with a long, stick-like object and possibly a knife. He ended up in front of defendant's house, where defendant was sitting on the porch. According to defendant, Williams made death threats. However, he never acted on those threats. Before he could do anything, Deangelo Jones tackled him and knocked him to the ground, other men joined in, and they assaulted Williams and disarmed him. Curtis Williams testified that defendant approached and stabbed James Williams after he had been disarmed.

People v. Jones, No. 330113, 2017 WL 3613902, at *1, 4 (Mich. Ct. App. Aug. 22, 2017). These facts 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)

Petitioner's conviction was affirmed on appeal. *Jones*, 2017 WL 3613092, *leave denied* 910 N.W.2d 278 (Mich. 2018). Petitioner subsequently returned to the trial court to file a post-conviction motion for relief from judgment pursuant to Michigan Court Rule 6.500. The trial court denied the motion. *People v. Jones*, No. 2014-00317-FC (Macomb Cnty. Cir. Ct. Dec. 12, 2019), *reconsideration den.* No. 2014-00317-FC (Macomb Cnty. Cir. Ct. Feb. 5, 2020); (ECF No. 10-11 & ECF No. 10-14 at PageID 6833-34.) The Michigan appellate courts denied Petitioner leave to appeal. *People v. Jones*, No. 354505 (Mich. Ct. App. Nov. 4, 2020), *leave denied* 971 N.W. 2d 615 (Mich. 2022) (ECF No. 10-14 at PageID 6704.)

Petitioner seeks a writ of habeas corpus on the following grounds:

> I. A writ of habeas corpus should issue where the hearing court should have granted petitioner's motion to suppress her out of court statement to detectives where a reasonable person in petitioner's shoes, taking account of petitioner's mental retardation would not have felt herself free to terminate questioning by police detectives.
>
> II. A writ of habeas corpus should issue where postconviction investigation revealed false, erroneous and mistaken medical evidence was used to establish the conviction, clearly made up by the State

> expert witness, Dr. Mary Pietrangelo, without correction by the prosecution, and the jurors were repeatedly encouraged by the prosecution to convict petitioner based on the false, erroneous and mistaken medical evidence, and the prosecution knew of the falsity but persisted in its use no matter of mistral or reversal of the conviction, and by engaging in inappropriate prosecutorial misconduct should be prohibiting from retrying this matter.
>
> III. A writ of habeas corpus should issue where defendant trial counsel rendered ineffective assistance when: (A) defense trial counsel failed to object to the false, erroneous and mistaken evidence and have it corrected, and failed to present defense expert testimony in rebuttal of the false, erroneous and mistaken evidence; (B) defense trial counsel failed to raise the defendant's limited intellectual capacity as relevant to whether she was in custody when she gave statements in a parking lot; (C) failed to request a continuance in order to make Dr. Ali Saad available as a defense witness; and (D) failed to move for a new trial on the basis that the jury's verdict was against the great weight of the evidence with respect to self defense or defense of others.
>
> IV. A writ of habeas corpus should issue where the state court failed to provide a remedy for the violation of [Michigan Compiled Laws §]780.961, which was a deprivation of petitioner's due process rights.

II. STANDARD OF REVIEW

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.

28 U.S.C. § 2254(d).

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, 405-406 (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.

AEDPA "imposes a highly deferential standard for evaluating state-court rulings," and "demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (internal citations omitted). A "state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). A "readiness to attribute error [to a state

court] is inconsistent with the presumption that state courts know and follow the law." *Woodford v. Viscotti*, 537 U.S. 19, 24 (2002).

III. DISCUSSION

A. *Miranda* - Claim 1

Petitioner first argues that the trial court erred in failing to suppress her statement to detectives, made without Petitioner being advised of her *Miranda* rights. Petitioner claims she was in custody when she made the statement and, therefore, should have been advised first of her *Miranda* rights. Petitioner further argues that the trial court and Michigan Court of Appeals failed to consider her mental disability and limited intelligence when rejecting her argument that her statement was obtained in violation of *Miranda*.

The Michigan Court of Appeals rejected these assertions, reasoning:

> The trial court's ruling indicates that it accepted the testimony of the officers, Emerson and Gilbert, over that of defendant and her sister, whom it found to be incredible. The officers' testimony established that defendant was believed to have been involved in the fight, but was not a suspect in Williams's stabbing. Emerson's lieutenant contacted defendant to arrange a meeting, defendant consented to the meeting, and it was agreed that the meeting would take place at a McDonald's restaurant. Defendant arranged her own transportation to the meeting location. Defendant approached the detectives' car without being signaled, walked around to the driver's side of the vehicle, and spoke to Emerson through his open window. At the end of the interview, Emerson asked defendant if she would provide a written statement and she agreed. He handed her a pen and paper and she began to write. He then offered to let her sit in the car where it was warm and defendant accepted. Defendant sat in the

backseat. The car was a standard-issue vehicle and was not equipped with any special restraints that would have prevented defendant from opening the door had she wanted to leave. Defendant admitted that she did not try to open the door and simply assumed it was locked. The officers did not speak to defendant while she was in the car writing her statement. After defendant completed her written statement, she got out of the car and went home with her sister. The entire episode lasted no more than one hour and defendant was not placed in handcuffs or told that she was under arrest. Given the totality of the circumstances, the trial court correctly determined that defendant was not in custody and thus her statements were admissible.

Defendant argues that the evidence presented at the hearing was insufficient to determine the issue because defense counsel alluded to her "limited intellectual capacity," but did not develop the issue sufficiently for the trial court to take it into consideration. We disagree. In *J D B v. North Carolina*, 564 US 261 . . . (2011), the Court confirmed that a determination of custody is an objective analysis based on the totality of the circumstances, *id.* at 270-271, but held that, given the inherent differences between children and adults, a child's age is a factor that can be taken into account when the child's age is known to the officer at the time of questioning or "would have been objectively apparent to a reasonable officer[.]" *Id.* at 271-277. Defendant argues that, in light of that decision, other individual characteristics of the person questioned are also relevant to the determination of custody, such that evidence of her limited intellectual capacity should have been developed and considered. However, the majority decision in *J D B* specifically notes that its holding "neither invites consideration of whether a particular suspect is 'unusually meek or compliant,' . . . nor 'expan[ds]' the *Miranda* custody analysis . . . into a test that requires officers to anticipate and account for a suspect's every personal characteristic[.]" *Id.* at 275 n 7. But see *People v. Braggs*, 209 Ill 2d 492, 510-511; 810 NE2d 472 (2004)(a defendant's mental retardation is a factor to be considered in determining whether the defendant was in custody).

In this case, defendant testified that she had a mental disability, but did not know the nature of the disability. While testimony at trial and the presentence investigation report (PSIR) indicated that defendant had been diagnosed with mental retardation and had a low

> IQ score, this Court's review is limited to "the information known to the trial court at the time it denied [the defendant's motion] to suppress." *People v. Burrell*, 417 Mich. 439, 449; 339 N.W.2d 403 (1983). In any event, defendant presented no evidence to show that her mental disability impaired her ability to understand the circumstances surrounding the giving of her statement, nor did she show that her disability was known to the detectives or would have been objectively apparent to a reasonable officer. Even in the *Braggs* case, the court found that "the police knowingly exploited defendant's mental retardation." *Braggs*, 209 Ill 2d at 513. Accordingly, defendant's alleged mental disability is not a relevant consideration in this case.

Jones, 2017 WL 3613902, at *2. As discussed below, the state court's decision is not based on an unreasonable determination of the facts, and it is not contrary to or based on an unreasonable application of Supreme Court precedent.

It is well established that a defendant's statements stemming from custodial interrogation may not be used by the prosecution unless it "demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). "[U]nless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it," the well-known *Miranda* warning statements must be provided to a suspect. *Id.* However, "police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the [police] station house, or because the questioned person is one whom

the police suspect." *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). Instead, "*Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him or her 'in custody.'" *Id.*

"Custody," for purposes of *Miranda*, "requires a significant deprivation of freedom." *Mason v. Mitchell*, 320 F.3d 604, 632 (6th Cir. 2003). "Two discrete inquiries are essential to the [in-custody] determination." *Thompson v. Keohane*, 516 U.S. 99, 112 (1992). "[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Id.* (footnote omitted). The Michigan Court of Appeals made these two inquiries and reasonably concluded that Petitioner was not subjected to custodial interrogation, to require the giving of *Miranda* warnings.

First, as the facts found by the Michigan Court of Appeals established—which are presumed correct and, in fact, are supported by the record (*see* ECF No. 9-13 at PageID 4640-4701)—Petitioner agreed to speak with the detectives and met them at a location she requested. Petitioner initially spoke with the detectives and told them what happened while she stood outside their car. *See Hart v. Steward*, 623 F. App'x 739, 745-46 (6th Cir. 2015) (habeas petitioner was neither in custody, nor subjected to interrogation, for *Miranda* purposes, when he made incriminating statements regarding murder weapon and its disposal to law

enforcement agent who was standing with petitioner outside of his vehicle in the driveway of petitioner's residence). It was only when the officers asked Petitioner to provide a written statement and they asked her if she wanted to sit in the car because it was cold outside, that Petitioner got into the officers' vehicle. Because Petitioner's incriminating statements were first made prior to her getting into the detectives' vehicle, any subsequent "physical restraint is arguably inconsequential." *United States v. Cruz-Rivera*, 14 F.4th 32, 49 (1st Cir. 2021).

It also was not unreasonable for the state court to conclude that Petitioner was not in custody even after she got into the detectives' vehicle. "Detention in a police car does not automatically constitute an arrest." *United States v. Bradshaw*, 102 F.3d 204, 211 (6th Cir.1996) (internal citations omitted). Here, Petitioner voluntarily got into the vehicle. It was not a marked police car and did not have any of the usual trappings of a police vehicle (e.g., overhead lights, a divider between the rear passenger compartment and front seat, or locks preventing a person from exiting the rear passenger area). At no time during this meeting was Petitioner handcuffed; nor was she ever told that she was under arrest. After Petitioner completed her written statement, the detectives thanked her for her time and Petitioner was allowed to leave the vehicle and return home.

These circumstances support the state court's findings that Petitioner was not in custody when she provided her oral and written statements to the police. *See*

United States v. Woodson, 30 F.4th 1295, 1304-05 (11th Cir. 2022) (defendant was not in "custody" for *Miranda* purposes; at beginning of interview, defendant was advised that he was not under arrest, that he was not charged with crime, and that conversation was voluntary, defendant was not handcuffed during interview, defendant sat in front passenger seat of police van, not back seat, where arrestees were typically placed, there was no indication that vehicle's doors were locked, and the van featured none of the trappings of a typical police vehicle, as it had no insignia, radio, cage, bar, or visible switch to its lights); *United States v. Bordeaux*, 400 F.3d 548, 559-60 (8th Cir. 2005) (defendant was not in custody for *Miranda* purposes when FBI agent, accompanied by tribal police force member, interviewed suspect; agent asked suspect whether he wanted to be interviewed in his apartment or in unmarked police vehicle and suspect chose vehicle, no weapons were shown, agent informed suspect that he was not under arrest and would not be arrested at interview's conclusion and that suspect's participation was voluntary and that he could end interview at any time, doors to vehicle were unlocked, suspect exited interview at one point to use restroom alone and returned voluntarily, and suspect himself stopped interview after 90 minutes and stated that he would not answer more questions without attorney); *United States v. Murray*, 89 F.3d 459, 462 (7th Cir. 1996) ("the fact that Murray was questioned while seated in the back of the squad car did not put him 'in custody' for purposes of *Miranda* warnings . . . Once

the police announced that Murray was under arrest and he was put in handcuffs, he was 'in custody' for purposes of *Miranda*. His statements prior to that time were correctly found to be admissible during the trial").

Petitioner argues that the state courts should have found *Miranda* warnings necessary due to her mental disability and low intelligence quotient (IQ) of 67. However, Petitioner identifies no Supreme Court precedent holding that an adult, as opposed to a juvenile, must be given *Miranda* warnings due to his or her mental disability.[1] "Since *Miranda*'s custody determination is to be made using an objective standard, the Supreme Court has not typically considered whether a defendant is more susceptible to police pressure due to her subjective characteristics, such as her mental health." *United States v. Patterson*, 393 F. Supp. 3d 456, 465 (E.D. La. 2019) (citing *J.D.B. v. North Carolina*, 564 U.S. 261, 282-98 (2011) (Alito, J., dissenting)). "The subjective views harbored by either the interrogating officers or the person being questioned are irrelevant. *J.D.B*, 564 U.S. at 271 (citing *Stansbury v. California*, 511 U.S. 318, 323 (1994); then quoting *Yarborough v. Alvarado*, 541 U.S. 652, 667 (2004)).

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[1] While an individual's mental health is one of several circumstances relevant to determining the voluntariness of a confession, *see Amunga v. Jones*, 51 F. App'x 532, 537 (6th Cir. 2002) (citing *Withrow v. Williams*, 507 U.S. 680, 693 (1993)), none of the other relevant factors (e.g., the length of the interrogation, its location, its continuity, the defendant's maturity, education, or physical condition) suggest that Petitioner's statement was involuntary.

In fact, the Sixth Circuit has expressly found defendants not entitled to *Miranda* warnings and that their confessions were not obtained in violation of the Constitution, simply due to their mental deficiencies. *See United States v. Macklin*, 900 F.2d 948, 949-51 (6th Cir. 1990) (concluding that the defendants were not entitled to *Miranda* warnings based on their low IQs of 59 and 70, where they were not in custody during questioning by government agents in front of their home, particularly as an agent repeatedly told the defendants they were not under arrest and were free to cut off questioning at any point). Other Circuits have reached the same conclusion. *See, e.g., Bordeaux*, 400 F.3d at 560 ("notwithstanding his low IQ, it was not reasonable for [the defendant] to believe that he was in custody: No great mental acumen was required to understand his situation"); *Johnson v. Harkleroad*, 104 F. App'x 858, 861-67 (4th Cir. 2004) (finding habeas petitioner not in custody, for purposes of *Miranda,* in spite of his diminished mental state, resulting from his prior history of drug and alcohol abuse and excessive use of drugs and alcohol several hours prior to the interview with the police, where the interview was initiated with the petitioner's consent, and continued after police repeatedly told him that he was not in custody and thus free to leave); *Purvis v. Dugger*, 932 F.2d 1413, 1417-19 (11th Cir. 1991) (petitioner not in custody when he went voluntarily to police station and confessed to a psychiatrist, in spite of petitioner's prior history of psychological treatment and

that he was a "suggestible submissive and childlike schizophrenic with an eight-year-old's understanding of waiver of his rights").

The Michigan Court of Appeals reasonably found that Petitioner was not in custody when she made her statements, despite her mental disability and low IQ. Therefore, the state court reasonably concluded that Petitioner's rights were not violated due to the lack of *Miranda* warnings. Petitioner is not entitled to relief on her first claim.

B. Newly Discovered Evidence/Perjury - Claim 2

Petitioner next claims that she is entitled to a new trial because of newly discovered evidence. This evidence, Petitioner claims, shows that the medical examiner changed her testimony between Petitioner's trial and her son Deangelo Jones' subsequent trial concerning the number of stab wounds the victim received.

At Petitioner's trial, the medical examiner testified that the victim had eight sharp impact injuries on his body, all the result of stabbing or incising. (ECF No. 9-20 at PageID 5015-22.) The medical examiner further testified that the three-inch stab wound in the left armpit area resulted in the victim's lung being punctured. (*Id.* at PageID 5018-19.) She provided that the victim also suffered a stab wound that was approximately three-quarters of an inch deep that hit one of the surface coverings of the right lung which can cause the lung to collapse. (*Id.* at PageID 5021.) The medical examiner concluded that the victim's cause of death

was "anoxic encephalopathy status post cardiopulmonary arrest with resuscitation due to multiple stab wounds of the torso." (*Id.* at PageID 5025.) She explained that the victim suffered brain injuries and cardiac arrest from the complications from the stab wounds he suffered. (*Id.*) The medical examiner also testified that there was nothing from the hospital records showing the hospital somehow caused the victim's death. (*Id.* at PageID 5026.)

Petitioner submits the same medical examiner's testimony from her son's trial. (ECF No. 4-19 at PageID 1941-80.) There, the medical examiner again testified that the victim's cause of death was "anoxic encephalopathy status post cardiopulmonary arrest with resuscitation due to multiple stab wounds of the torso." (*Id.* at PageID 1950.) However, she now testified that there were three stab wounds and one incised wound on the body. (*Id.* at PageID 1956-57.)

The medical examiner explained that her assessment of the number of wounds had changed since her previous testimony because further review of the victim's autopsy records showed that what she originally believed were stab wounds were medical interventions or chest tube wounds. (*Id.* at PageID 1958.) The medical examiner described the three stab wounds as being the wounds she previously testified caused the victim's death. (*Id.* at PageID 1959-60, 1967.) She explained that these three stab wounds remained the cause of death "because they

are the injury which initiated the entire series of events where he wound up deceased." (*Id.* at PageID 1967.)

To the extent Petitioner seeks habeas relief based on a claim that the change in the medical examiner's testimony establishes Petitioner's actual innocence, she would not be entitled to the issuance of a writ. In *Herrera v. Collins*, 506 U.S. 390 (1993), the Supreme Court explained that "[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding." *Id.* at 400. "[F]ederal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution[,] not to correct errors of fact." *Id.*; *see also McQuiggin v. Perkins,* 569 U.S. 383, 392 (2013) ("We have not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence"). Freestanding claims of actual innocence are thus not cognizable on federal habeas review, absent independent allegations of constitutional error at trial. *See Cress v. Palmer,* 484 F.3d 844, 854-55 (6th Cir. 2007) (collecting cases).

Moreover, to establish a constitutional due process claim arising from a state court's denial of a motion for new trial based on newly discovered evidence, a habeas petitioner "must demonstrate that the trial court's denial of his [or her] motion for new trial was 'so egregious' that it violated his [or her] right to a

fundamentally fair trial." *Pudelski v. Wilson*, 576 F.3d 595, 611 (6th Cir. 2009) (citing *Fleming v. Metrish*, 556 F.3d 520, 535 (6th Cir. 2009); *Baze v. Parker*, 371 F.3d 310, 324 (6th Cir. 2004)). Petitioner fails to show that the state court's refusal to grant her a new trial based on the change in the medical examiner's testimony violated her right to a fundamentally fair trial.

As the trial judge stated at great length in denying Petitioner's claim on post-conviction review, there was no dispute that Petitioner stabbed the victim. (ECF No. 10-11 at PageID 5973-75.) No one testified that they saw anyone else stab the victim. (*Id.* at PageID 5974.) The medical examiner's altered testimony did not correlate with Petitioner's trial testimony that she stabbed the victim only one time. The trial court also noted that the Michigan Court of Appeals on direct review of Petitioner's conviction placed no importance on the number of stab wounds in rejecting Petitioner's self-defense claim, but looked at the fact that the victim had already been tackled to the ground by Petitioner's son and that other men had joined in, assaulting and disarming the victim before Petitioner approached and stabbed him. The Michigan Court of Appeals also noted that the discrepancies in Petitioner's statements regarding why she stabbed the victim suggested that the evidence was sufficient to prove that she did not act in self-defense. The trial judge also rejected Petitioner's argument that the stab wounds were not life threatening by noting that the jury in Petitioner's son's case found

him guilty of second-degree murder and assault with intent to do great bodily harm despite the medical examiner testifying that the victim was stabbed only three times. (*Id.*)

Although the medical examiner changed her testimony concerning the number of stab wounds at Petitioner's son's trial, she still testified that these remaining wounds were severe and were the cause of the victim's death. The medical examiner's testimony at this second trial still contradicted Petitioner's trial testimony that she stabbed the victim one time. Further, the medical examiner's correction did not alter the fact that the evidence, when viewed in a light most favorable to the prosecution, established that Petitioner stabbed the victim when he was already on the ground and had been restrained and disarmed. Petitioner has not shown that there would be a different result if she was granted a new trial based on this newly discovered evidence.

Petitioner also is not entitled to habeas relief based on her assertion that the medical examiner committed perjury at her trial. "[D]eliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio v. United States*, 405 U.S. 150, 153 (1972) (internal quotation marks omitted). There also is a denial of due process when the prosecutor allows false evidence or testimony to go uncorrected. *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (citations omitted). To prevail on a false-

testimony claim, a defendant "must show (1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false." *Coe v. Bell*, 161 F.3d 320, 343 (6th Cir. 1998) (quoting *United States v. Lochmondy*, 890 F.2d 817, 822 (6th Cir. 1989)). The testimony must have been " 'indisputably false,' rather than merely misleading." *Byrd v. Collins*, 209 F.3d 486, 517 (6th Cir. 2000) (quoting *Lochmondy*, 890 F.3d at 823).

The trial court rejected Petitioner's false-testimony claim, finding no evidence that the prosecutor knew the victim had been stabbed only three times when the medical examiner testified that there were more stab wounds during Petitioner's trial. (ECF No. 10-11 at PageID 5975.) The trial court also found the testimony immaterial as the number of stab wounds was not significant to the jury's determination with respect to Petitioner's claim that she acted in self defense or the defense of others. (*Id.* at PageID 5976.) These were reasonable determinations.

Petitioner argues that the prosecutor knew that the medical examiner was lying about the number of stab wounds because at least one of the treating doctors at the hospital indicated in notes that the victim had been stabbed only three times. However, "[t]he testimony of an expert is not perjury merely because it differed from opinions of other experts." *Couch v. Booker*, 650 F. Supp. 2d 683, 699 (E.D. Mich. 2009) (State's expert did not commit perjury in his testimony as to the cause

of victim's death in a murder prosecution, even though another pathologist reached a different conclusion as to the cause of death). The only other evidence of perjury that Petitioner offers is that the medical examiner changed her opinion as to the number of stab wounds that the victim suffered between Petitioner's trial and the trial of Petitioner's son. But the medical examiner did so after her further review of the records showed that some of the initial wounds were from medical interventions or chest tube wounds. In other words, she initially reviewed or interpreted the records incorrectly. There is no indication that the medical examiner intentionally testified falsely at Petitioner's trial.

In any event, Petitioner cannot show that the change in testimony was material. Significantly, the medical examiner's testimony was consistent at both trials that, regardless of the number of stab wounds, it was the stab wounds that caused the victim's death. The medical examiner's change in testimony concerning the number of stab wounds was a "mere inconsistenc[y]" which does not establish that the prosecution knowingly used false testimony. *See Ashburn v. Korte*, 761 F.3d 741, 757 (7th Cir. 2014). Even if Petitioner could show that the medical examiner testified falsely *and* that the prosecution knew or should have known of the perjury, Petitioner cannot show any likelihood that the testimony could have affected the jury's verdict. *Id.* at 757-58. As the trial court pointed out, the jury found Petitioner's son guilty of second-degree murder and assault with

intent to do great bodily harm despite hearing that the victim had been stabbed only three times.

Petitioner is not entitled to relief on her second claim.

C. Ineffective Assistance of Counsel - Claim 3

Petitioner next alleges she was denied the effective assistance of counsel.

A defendant must satisfy a two-prong test to establish the denial of the effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. *Id.* The defendant must overcome "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]" *Id.* at 689. In other words, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* (internal quotation marks and citation omitted).

Second, the defendant must show that such performance prejudiced the defense. *Id.* at 687. 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." *Id.* at 694. "*Strickland* places

the burden on the defendant, not the State, to show a 'reasonable probability' that the result would have been different." *Wong v. Belmontes*, 558 U.S. 15, 27 (2009).

Petitioner first argues that defense counsel should have objected to the medical examiner's false or perjured testimony. As discussed above, Petitioner fails to show that the medical examiner committed perjury at her trial. Counsel, therefore, was not ineffective for failing to raise the asserted challenge. *See Brown v. Burt*, 65 F. App'x. 939, 942 (6th Cir. 2003) (concluding that, absent evidence of perjury, counsel was not ineffective for failing to demonstrate perjury through cross-examination of witness).

As a related claim, Petitioner argues that her trial counsel should have called an expert witness to challenge the medical examiner's findings as to the number of stab wounds and cause of death. The first attorney representing Petitioner informed the trial court during a pre-trial proceeding that he had retained an unnamed nurse, who reviewed the victim's medical records and concluded he died from a heart attack and not from the stab wounds. (ECF No. 4-3 at PageID 436.) This nurse was never identified and did not testify at Petitioner's trial.

Nor was there testimony from Dr. Francisco Diaz, who the court had appointed as an independent medical examiner for the defense approximately six months before trial. (ECF No. 10-8 at PageID 5907-08.) Petitioner has not

provided an affidavit from Dr. Diaz establishing what his proposed testimony would have been or how it would aid the defense.

A habeas petitioner's claim that trial counsel was ineffective for failing to call an expert witness cannot be based on speculation. *See Keith v. Mitchell*, 455 F.3d 662, 672 (6th Cir. 2006); *see also Tinsley v. Million*, 399 F.3d 796, 806 (6th Cir. 2005) (rejecting ineffective assistance of counsel claim for failure to call expert when the petition did not identify an expert who would have reached opinions and given testimony contrary to the prosecutor's experts). Petitioner offers no evidence that there was an expert who would have challenged the medical examiner's findings that the stab wounds, regardless of number, caused the victim's death. In the absence of such proof, Petitioner is unable to establish that she was prejudiced by counsel's failure to call an expert to testify at trial, so as to support the second prong of her ineffective assistance of counsel claim. *See Clark v. Waller*, 490 F. 3d 551, 557 (6th Cir. 2007).

Moreover, this Court would be unable on federal habeas review to entertain an affidavit from Dr. Diaz or this unnamed nurse. Habeas review under § 2254(d) is "limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). *Cullen* precludes this Court from considering any new evidence that Petitioner would even want to present at this point in support of his ineffective assistance of trial counsel claim.

Cf. Campbell v. Bradshaw, 674 F.3d 578, 590, n.3 (6th Cir. 2012) (declining to consider testimony taken in federal evidentiary hearing because it was not part of the state court record).

Notably, Petitioner's trial counsel cross-examined the medical examiner at length concerning her findings. (*See* ECF No. 9-20 at PageID 5032-51.) Through counsel's cross-examination, the medical examiner admitted the victim contracted pneumonia while hospitalized and subsequently suffered a heart attack. (*Id.* at PageID 5033-34.) The medical examiner additionally acknowledged during cross-examination that an emergency room doctor reported that the victim's wounds were not life-threatening. (*Id.* at PageID 5037-38.) The medical examiner further testified in response to defense counsel's questions that the victim had a history of hypertension and seizure disorders. (*Id.* at PageID 5038.) She admitted that medical malpractice could be an intervening cause of death in some cases. (*Id.* at PageID 5039-40.) She testified on cross-examination, as well, that the victim had marijuana and alcohol in his system and was combative when he was admitted to the hospital. (*Id.* at PageID 5043-47, 5050.) The Supreme Court has found that "[i]n many instances cross-examination will be sufficient to expose defects in an expert's presentation." *Richter*, 562 U.S. at 111. Defense counsel attempted to do so here by bringing out testimony that other causes may have led to the victim's death.

Petitioner next contends that trial counsel was ineffective for failing to present evidence of Petitioner's limited intelligence at the suppression hearing to establish that she was in custody for purposes of *Miranda*. As discussed earlier with respect to Petitioner's first claim, Petitioner was not in custody when she spoke to the detectives and any obligation to provide *Miranda* warnings was not dependent on her intellectual capabilities. There was no reasonable probability that a motion to suppress based on an alleged *Miranda* violation would have succeeded had defense counsel presented evidence of Petitioner's limited intelligence. Thus, Petitioner was not denied effective assistance by her trial counsel's failure to move for the suppression of her statement on this basis.

Petitioner next contends that counsel was ineffective for failing to request a continuance to secure the emergency room doctor's testimony, presumably consistent with his statement to a police officer that the victim's injuries were not life threatening. On direct appeal, the Michigan Court of Appeals rejected this claim, reasoning:

> Even if a continuance would have been warranted, defendant has not shown that she was prejudiced by counsel's failure to request one. Although defendant suggests that Dr. Saad may have provided evidence that Williams died from some intervening cause unrelated to his stab wounds, defendant has not made an offer of proof of Dr. Saad's proposed testimony and the record indicates only that Dr. Saad may have testified that Williams's stab wounds were not life-threatening at the time he was admitted to the hospital. The record does not indicate that Dr. Saad would have testified that Williams's injuries were not a proximate cause of his death. Because defendant

> has not established factual support for any claim that counsel's omission deprived her of important exculpatory evidence or a substantial defense, this claim must fail.

Jones, 2017 WL 3613902, at *6. This reasoning was neither contrary to, nor an unreasonable application of, clearly established federal law.

Petitioner has not presented an affidavit from the emergency room physician—to the Michigan courts or this Court—concerning his proposed testimony and willingness to testify on Petitioner's behalf.[2] Conclusory allegations of ineffective assistance of counsel, without any evidentiary support, do not provide a basis for habeas relief. *See Workman v. Bell*, 178 F.3d 759, 771 (6th Cir. 1998). In the absence of such evidentiary support, Petitioner is unable to establish the second *Strickland* prong—prejudice as a result of counsel's failure to call the emergency room doctor at trial, and therefore to seek a continuance to secure the doctor's testimony. In any event, testimony that the victim's stab wounds were not initially life threatening at the time of his admission to the hospital would not negate a finding that the wounds ultimately led to his subsequent medical complications and resulting death.

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[2] Again, on federal habeas review, this Court would be precluded from considering any affidavit from the emergency room physician as review under § 2254(d) is "limited to the record that was before the state court that adjudicated the claim on the merits." *Pinholster*, 563 U.S. at 181.

Under Michigan law, "[t]o warrant a homicide conviction, the death must be the natural and probable consequence of the unlawful act and not the result of an independent intervening cause in which the accused does not participate and which he cannot foresee." *People v. Clark*, 431 N.W.2d 88, 89 (Mich. Ct. App. 1988). The prosecution does not need to prove that the defendant's conduct was "*the* sole cause" of death, but only that the conduct "was *a* substantial factor in producing the harm." *People v. Bailey*, 549 N.W.2d 325, 334 (Mich. 1996) (emphasis added). Causation is a question of fact for the jury. *Clark*, 431 N.W.2d at 89. The prosecution can prove the element of proximate cause beyond a reasonable doubt where non-fatal wounds "cause death indirectly through a chain of natural effects and causes unchanged by human action." *People v. Thomas*, 272 N.W.2d 157, 161 (Mich. Ct. App. 1978) (quoting 26 Am. Jur. Homicide § 52 at 195).

Under Michigan law, "[w]here an independent act of a third party intervenes between the act of a criminal defendant and the harm to a victim, that act may only serve to cut off the defendant's criminal liability where the intervening act is the sole cause of harm." *Bailey*, 549 N.W.2d at 334 (citations omitted). In the context of medical treatment, "evidence of grossly negligent treatment constitutes evidence of a sole, intervening cause of death. Anything less than that constitutes, at most, merely a contributory cause of death, in addition to the defendant's conduct." *Id.* At 335; *see also People v. Herndon*, 633 N.W.2d 376, 396 (Mich. Ct. App. 2001)

(quoting *Bailey*, 549 N.W.2d at 334). Moreover, under Michigan law, "[i]ntervening medical error is not available as a defense to a defendant who has inflicted a mortal wound upon a victim." *People v. Williams*, 310 N.W.2d 246, 248 (Mich. Ct. App. 1981), *rev'd on other grounds* 413 Mich. 940 (1982). Therefore, "[a]lthough the intervening cause doctrine may not absolve the defendant of criminal responsibility when there is a causal link between a nonfatal injury and the victim's death, it most definitely does not apply to an injury that is fatal." *Herndon*, 633 N.W.2d at 397 (internal footnotes omitted).

Because Michigan law requires that a defendant's conduct be only "a" cause of the victim's death, and not the sole cause, the fact that the victim may have developed medical complications after being hospitalized which contributed to his death did not negate that Petitioner's act of stabbing the victim was a substantial cause of his death, because "joint mutual causes do not excuse culpable behavior." *Danielak v. Brewer*, 747 F. App'x 339, 345 (6th Cir. 2018). Because Michigan law provides that a person can be convicted of murder if his or her conduct contributed to the victim's death, any decision by Petitioner's counsel to forego a causation defense in favor of a self-defense argument was reasonable. *See Moore v. Steward*, 948 F. Supp. 2d 826, 846 (W.D. Tenn. 2013). This is particularly so in the absence of any evidence challenging the medical examiner's findings that the victim died as a result of the wounds Petitioner inflicted.

Petitioner lastly contends that trial counsel was ineffective for failing to move for a new trial on the ground that the verdict went against the great weight of the evidence because the prosecutor failed to disprove that she acted in self-defense. The Michigan Court of Appeals rejected this claim based on its finding that there was sufficient evidence from which the jury could conclude that Petitioner did not act in self-defense. *Jones*, 2017 WL 3613902, at *6. As the state court explained:

> The evidence, when viewed in a light most favorable to the prosecution, showed that Williams was irate over having been robbed and was looking for the people who had robbed him to get his money back. He armed himself with a long, stick-like object and possibly a knife. He ended up in front of defendant's house, where defendant was sitting on the porch. According to defendant, Williams made death threats. However, he never acted on those threats. Before he could do anything, Deangelo Jones tackled him and knocked him to the ground, other men joined in, and they assaulted Williams and disarmed him. Curtis Williams testified that defendant approached and stabbed James Williams after he had been disarmed. Evidence that James Williams was on the ground and unarmed when he was stabbed was sufficient to prove beyond a reasonable doubt that defendant did not have an honest and reasonable belief that she or her son were in imminent danger of serious harm or death. While defendant questions the credibility of Curtis Williams's testimony, "[w]itness credibility and the weight accorded to evidence is a question for the jury, and any conflict in the evidence must be resolved in the prosecution's favor."

Id. at *4 (quoting *People v. McGhee*, 709 N.W.2d 595, 613 (Mich. Ct. App. 2005)).

Under Michigan law, "one acts lawfully in self defense if he [or she] honestly and reasonably believes that he [or she] is in danger of serious bodily harm or death, . . . as judged by the circumstances as they appeared to the defendant at the time of the act." *Blanton v. Elo*, 186 F.3d 712, 713, n. 1 (6th Cir. 1999) (citing *People v. Heflin*, 456 N.W.2d 10, 18 (1990)) (internal quotation marks and additional citation omitted); *see also* Mich. Comp. Laws § 780.972. To be lawful, one generally may not use more than the force necessary to defend oneself. *Morningstar v. Worthy*, 454 F. App'x 391, 404 n.10 (6th Cir. 2011) (quoting *People v. Roper*, 777 N.W.2d 483, 491-92 (Mich. Ct. App. 2009)). The right to act in self-defense also includes the right to defend another person. *See* Mich. Comp. Laws § 780.972.

Although Petitioner testified that she stabbed the victim once in self-defense or in defense of her son, there was testimony that Petitioner's son and two other men were already on top of and attempting to disarm or had disarmed the victim when Petitioner stabbed him. (ECF No. 10-3 at PageID 5490-95, 5507, 5524.) The same witness testified that he attempted, without success, to keep Petitioner from joining the scuffle by telling her that the other men had restrained the victim already. (*Id.* at PageID 5493, 5494-96.) Another witness testified that she saw the victim getting "stomped" and kicked by three or four men; and, at that point, the victim did not appear to have the knife or pipe and did not appear to be a threat

anymore. (*Id.* at PageID 5545-48.) Petitioner's own testimony that her son and two other men had intervened and disarmed the victim before Petitioner stabbed the victim undermines her own self-defense claim. (ECF No. 10-4 at PageID 5714-19.) Petitioner testified that she stabbed the victim only one time even though there was evidence that the victim had been stabbed multiple times and that only Petitioner stabbed the victim. (*Id.* at PageID 5720-21.) Significantly, Petitioner admitted at trial that she did not tell the responding officers on the night in question that she stabbed the victim, nor did she mention that the victim had a knife and had pulled it out. (*Id.* at PageID 5723-26.)

From these circumstances, a jury could reasonably reject Petitioner's self-defense claim and conclude she stabbed the victim when he was no longer a threat, in that he had been subdued and disarmed. Because there was sufficient evidence to rebut Petitioner's self-defense claim, her counsel was not ineffective for failing to move for a new trial on the ground that the verdict went against the great weight of the evidence. Petitioner is not entitled to relief on her third claim.

D. Failure to Comply with Michigan Compiled Law § 780.961(2) - Claim 4

Petitioner lastly argues that she is entitled to habeas relief because the Michigan Court of Appeals failed to provide a remedy for an alleged violation of Michigan Compiled Laws § 780.961(2), which provides that the prosecutor must present evidence at the time of the warrant issuance, at the preliminary

examination, and at trial that the defendant's actions were not justified under section 2 of the self-defense act, Michigan Compiled Laws § 780.972. The Michigan Court of Appeals rejected Petitioner's claim, reasoning:

> Even assuming that the prosecutor failed to present such evidence at the time of the warrant issuance or the preliminary examination, we are at a loss to determine what the appropriate remedy would be at this point. The requirement obviously is intended to prevent a defendant who has a claim of self-defense from having to go trial unless the prosecutor has sufficient evidence to defeat the claim of self-defense. But the trial has happened and we cannot relieve defendant of the burden of defending herself at a trial that has already happened. As for the requirement that evidence be presented at trial, that has happened and the jury rejected the claim of self-defense.

Jones, 2017 WL 3613902, at *6.

"A claim based *solely* on an error of state law is not redressable through the federal habeas process." *See Norris v. Schotten*, 146 F.3d 314, 328 (6th Cir. 1998) (citing *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991); *Hutchison v. Marshall*, 744 F.2d 44, 46-47 (6th Cir. 1984)). Redress is available only where a violation of state law "has rendered the trial that convicted the [petitioner] so fundamentally unfair as to have deprived [the petitioner] of substantive due process in violation of the U.S. Constitution[.]" *Id.* (citing *Estelle*, 502 U.S. at 67-68; *Serra v. Mich. Dep't of Corr.*, 4 F.3d 1348, 1354 (6th Cir. 1993)). As there was sufficient evidence presented at Petitioner's trial to undermine her self-defense claim, that is not the situation here.

IV. Conclusion

For the reasons set forth above, the Court is denying Petitioner's application for habeas corpus relief. Before Petitioner may appeal this decision, she must obtain a certificate of appealability.

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). To receive a certificate of appealability, "a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted). Petitioner fails to make this showing. Nevertheless, the issues raised are not frivolous. Therefore, an appeal could be taken in good faith and Petitioner may proceed *in forma pauperis* on appeal. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A).

Accordingly,

IT IS ORDERED that the Petition for Writ of Habeas Corpus is **DENIED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Petitioner is **DENIED** a certificate of

appealability but is **GRANTED** leave to appeal *in forma pauperis*.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: January 31, 2024

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, January 31, 2024, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BELINDA JONES,

Petitioner,

Case Number 22-cv-11237
Honorable Linda V. Parker

v.

JEREMY HOWARD,

Respondent,

_____/

JUDGMENT

In an Opinion and Order issued on this date, the Court concluded that Petitioner is not entitled to a writ of habeas corpus pursuant to 28 U.S.C. § 2254 with respect to her state-court conviction for second-degree murder.

Accordingly,

IT IS ORDERED that the petition for writ of habeas corpus is **DENIED WITH PREJUDICE.**

IT IS FURTHER ORDERED that Petitioner is **DENIED** a certificate of appealability but is **GRANTED** leave to proceed in forma pauperis on appeal if she appeals the Court's decision.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: January 31, 2024

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, January 31, 2024, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan
Case Manager

No. 24-1164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BELINDA JONES,

Petitioner-Appellant,

v.

JEREMY HOWARD, WARDEN,

Respondent-Appellee.

ORDER

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

Belinda Jones petitions for rehearing en banc of this court's order entered on July 23, 2024, denying a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court,* none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

*Judge Davis recused herself from participation in this ruling.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

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Filed: September 23, 2024

Ms. Belinda Jones
Huron Valley Complex - Women
3201 Bemis Road
Ypsilanti, MI 48197

Re: Case No. 24-1164, *Belinda Jones v. Jeremy Howard*
Originating Case No.: 2:22-cv-11237

Dear Ms. Jones,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Ms. Andrea M. Christensen-Brown

Enclosure

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 2014-003317-FC

vs.

BELINDA DENISE JONES,

Defendant.
_____/

OPINION AND ORDER

This matter is before the Court on Defendant's Motion for Relief from Judgment. Defendant has simultaneously filed a Motion for Appointment of Counsel, a Motion for Expansion of the Record, and a Motion for Evidentiary Hearing.

I. Background

On or about September 3, 2015, Defendant was convicted of second-degree murder after a jury trial in this Court. On November 15, 2013, the victim, James Williams, had approached Defendant's house in an aggressive manner and became embroiled in a fight with four men, one of whom was Defendant's son, in Defendant's yard. At Defendant's trial, Dr. Mary Pietrangelo ("Pietrangelo"), the medical examiner who conducted the victim's autopsy, testified regarding the victim's cause of death. At Defendant's trial, Pietrangelo testified that the victim had eight "sharp impact injuries" on his body, all of which resulted from either stabbing or incising. Tr. 8/27/15 at 40-47. Pietrangelo testified that the three-inch stab wound in the left armpit area resulting in the victim's lung being punctured. *Id.* at 43:19-44:19. Pietrangelo testified that the victim also suffered a stab wound which was approximately three-quarters of an inch deep which hit one of the surface coverings of the right lung which can result in the lung collapsing. *Id.* at

46:5-14. Pietrangelo testified that the victim's cause of death was "anoxic encephalopathy status post cardiopulmonary arrest with resuscitation due to multiple stab wounds of the torso." *Id.* at 50:5-7. Pietrangelo clarified that this meant that the victim suffered brain damage and cardiac arrest due to complications from the stab wounds that he incurred. *Id.* at 50:8-14.

At the trial, the testimony initially reflected that Defendant denied having stabbed the victim. Tr. 8/28/15. However, Detective Larry Emerson testified that when he spoke to Defendant the next day, she admitted to having stabbed the victim "several times in the back." Tr. 8/28/15 at 210:22-211:2. Defendant wrote a statement for the police admitting that she had stabbed the victim because she thought she had seen a knife. Tr. 8/28/15 at 219:10-12.

Curtis Williams testified that Defendant jumped into the fight with the victim after he had been disarmed. Tr. 9/1/15 at 68:3-71:20. He testified that he saw what looked like Defendant punching the victim a few times and only afterward saw the knife in her hand. *Id.* at 70:7-14.

Jonathan Martin, Defendant's boyfriend, testified that he observed the victim reaching for something while he had Defendant's son pinned to the ground and said aloud that the victim was going to stab Defendant's son. *Id.* at 145:6-24. However, Mr. Martin then testified that when he said that, one of Defendant's son's friends ran up and started stomping and kicking the victim. *Id.* at 145:24-25. Martin then testified that another of Defendant's son's friends joins the fray, hitting the victim in the rib area, then picking up the victim's pole and hitting the victim with it. *Id.* at 146:6-147:4. Martin testified that Defendant never left the porch and he never saw anyone stab the victim. *Id.* at 147:17-6.

Defendant testified that she stabbed the victim in the shoulder because she saw him reaching for a knife during the fight and believed her son was in danger. Tr. 9/2/15 at 24:1-6. Although Defendant only admitted to stabbing the victim one time, she admitted that she and the

victim were the only ones with knives and she did not see anyone else stab him during the altercation. Tr. 9/2/15 at 62:23-64:8.

Defendant's conviction was upheld by the Court of Appeals in an unpublished opinion dated August 22, 2017. Pl. Ex. 1.

On February 8, 2018, Defendant's son was proceeding with a jury trial related to his involvement in the same incident for which Defendant was convicted. On that date, Pietrangelo testified again regarding the autopsy of the victim. Tr. 2/8/18 at 115-150. Pietrangelo testified that the victim's cause of death was "anoxic encephalopathy status post cardiopulmonary arrest with resuscitation due to multiple stab wounds of the torso." *Id.* at 120:15-18. Pietrangelo testified that there were three stab wounds and one incised wound on the body. *Id.* at 127:3-16. Pietrangelo testified that her testimony was now different because further review of the records showed that some of what she had originally believed to be stab wounds were medical interventions or chest tube wounds. *Id.* at 128:11-20. Pietrangelo described the three stab wounds as follows: one was three-quarters of an inch deep on the upper-right back; number two was approximately three inches deep under the left arm around the armpit area; and the third one was on the left upper abdomen and was about one-half inch deep. *Id.* at 129:2-24. The incised wound was about two and a quarter inches long. *Id.* at 130:2-4. Referring to medical records from the hospital, Pietrangelo testified that the victim's chief complaint upon admission to the hospital was "stabbed multiple times." *Id.* at 136:8-19. Pietrangelo testified that the stab wounds remain the cause of death "[b]ecause they are the injury which initiated the entire series of events where he wound up deceased." *Id.* at 137:3-6. Further, Pietrangelo testified that the victim was stabbed in the lung which caused it to collapse. *Id.* at 148:20-24.

Defendant filed the instant motion on May 20, 2019, requesting that this Court require a response from the prosecutor, hear oral arguments on the motion, hold an evidentiary hearing, and grant her motion for relief from judgment and bar retrial or order a new trial. On July 15, 2019, this Court entered an order requiring the prosecutor to file a response within 56 days. On September 16, 2019, the People requested an additional 30 days to respond. The People filed their response on October 11, 2019, requesting that it be dismissed without further hearing.

II. Standard of Review

"Post-conviction relief is provided for the extraordinary case in which a conviction constitutes a miscarriage of justice." *People v Reed*, 449 Mich 375, 381; 535 NW2d 496 (1995). The Defendant has the burden of establishing entitlement to the relief requested. MCR 6.508(D). Pursuant to MCR 6.508(D)(3), this Court may not grant a motion for relief from judgment that alleges grounds for relief, other than jurisdictional defects, that could have been raised on appeal or in a prior motion, unless the defendant demonstrates both good cause for failure to raise the issue and actual prejudice from the alleged irregularities that support the claim of relief.

III. Arguments

Defendant argues that Pietrangelo's changed testimony constitutes newly discovered evidence which makes a different result probable on retrial. Further, Defendant argues that Pietrangelo's testimony at Deangelo's trial was that the knife injuries were superficial and not life-threatening.

In response, the People dispute that Pietrangelo's altered testimony makes a different result probable on retrial. The People argue that the stab wounds which resulted in injury to the victim's lung remained the same at each trial, so there is no material discrepancy between the testimony offered at Defendant's trial and her son's trial. Further, with regard to the impact of

this changed testimony on Defendant's claim of self-defense or defense of others, the People argue that the trial testimony indicated that Defendant stabbed the victim after he was already disarmed, laying on the ground, and being beaten and stomped on by at least three grown men, such that Defendant's stabbing of the victim was not necessary for anyone's defense.

IV. Law & Analysis

The People do not dispute this Court's ability to consider Defendant's motion for relief from judgment as being premised on newly discovered evidence. Therefore, the Court will examine whether this newly discovered evidence is sufficient to grant a new trial for Defendant.

The four-part test for a new trial motion based on newly discovered evidence requires the defendant to show that (1) the evidence itself was newly discovered, not just its materiality; (2) the newly discovered evidence is not cumulative; (3) the party could not by using reasonable diligence have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. *People v Rao*, 491 Mich 271, 815 NW2d 105 (2012). The trial court may also grant a new trial if it believes that the jury's verdict resulted in a miscarriage of justice. MCR 6.431(B). The People do not dispute the first three elements of this test.

In examining whether this "new evidence makes a different result probable on retrial," the trial court must consider the evidence that was previously introduced at trial. *People v Johnson*, 502 Mich 541, 571; 918 NW2d 676, 690 (2018). The trial court must also consider the evidence that would be admitted at retrial. *Id.*

The issue before this Court is whether there is a material difference between Defendant having stabbed the victim seven times and stabbing him three times. The only individuals to testify as to Defendant's stabbing of the victim were Curtis Williams and Defendant. Defendant initially denied that she was ever involved in the altercation and then testified that she only

stabbed the victim one time but never saw anyone else stab the victim. Curtis Williams did not testify as to how many times he saw Defendant stab the victim. No one else testified that they saw anyone stab the victim.

However, the change in Pietrangelo's testimony does not alter the fact that there is no dispute that any stab wounds on the victim's body were made by Defendant. Further, Pietrangelo's altered testimony does not correlate with Defendant's testimony that she stabbed the victim only one time. Therefore, because Defendant's testimony remains inconsistent with the medical evidence, Pietrangelo's testimony that the victim was stabbed three times rather than seven would not probably result in a different result in a retrial.

This Court also notes that the Court of Appeals, in reviewing Defendant's conviction and claim of self-defense, placed no reliance on the number of stab wounds the victim suffered, but examined the timing of Defendant's actions. Pl. Ex. 1. Specifically, the Court of Appeals noted that the victim had already been tackled to the ground by Defendant's son and other men had joined in, assaulting and disarming the victim when Defendant approached and stabbed the victim. *Id.* The Court also noted that the discrepancies in Defendant's statements regarding why she stabbed the victim suggested that the evidence was sufficient to prove that she did not act in self-defense. *Id.*

Further, with regard to Defendant's argument that the stab wounds were superficial and not life-threatening, the testimony which Defendant relies on was offered at the trial of her son. That trial resulted in her son's convictions of aiding and abetting second-degree murder and assault with intent to do great bodily harm. Clearly, a jury had reason to believe that the stab wounds the victim suffered were the cause of his death. Although Defendant's motion refers to "Dr. Saad's medical conclusion," this Court can only assume that Defendant is referring to a

hearsay account from Dr. Saad to Officer Gilchrist that the victim's wounds weren't life threatening on the date that Dr. Saad spoke to Officer Gilchrist. Def. Mot. Ex. F. However, this is not admissible evidence for the truth of the statement due to its hearsay within hearsay nature.

Finally, although the prosecution does not challenge the fact that Defendant's motion is based on newly discovered evidence, this Court notes that the medical records attached to the motion indicate that it was well established prior to trial that the victim had been stabbed three times. The victim's hospital admission notes state "stabbed 3 times. 2 thorax 1 L forearm." Def. Mot. Ex. C. The victim's Medical Record states in both his admitting diagnoses and discharge diagnoses, "Stab in the chest and left arm, 3 lacerations total." Def. Mot. Ex. D. In his consulting physician's History narrative, she states that the victim had been "stabbed 3 times, 2 on the thorax and 1 on the left forearm." Def. Mot. Ex. E. Officer Gilchrist's Police Report states that he had been informed by Dr. Saad that the victim had 3 stab/puncture wounds on his left side." Def. Mot. Ex. F.

On another note regarding access to this previously existing evidence, Defendant seems to argue that because she later found documentation that the victim had been stabbed three times, this means that the prosecutor knew that the victim had only been stabbed three times but intentionally allowed false testimony regarding the number of stab wounds. Defendant has neither legally nor factually supported this argument. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *Natl Waterworks, Inc v Intl Fid & Sur, Ltd*, 275 Mich App 256, 739 NW2d 121, 127 (2007). This Court will not presume, without evidence to the contrary, that the prosecutor withheld information from the jury which was in Defendant's possession during her trial.

Although Defendant has referenced Pietrangelo's testimony at the preliminary examination and the district court's bindover determination, because Defendant has not filed a motion to quash with her motion for relief from judgment, district court proceedings are not properly before this Court at this time and will therefore not be addressed in this Opinion.

The Court finds that Pietrangelo's testimony that the victim was stabbed seven times when he was actually stabbed three times was harmless error. The number of stab wounds was not significant to the jury's determination that Defendant did not act in either self-defense or in defense of others in stabbing the victim. The Court declines to grant Defendant's request for a new trial, evidentiary hearing, or counsel on this basis.

V. Conclusion

For the reasons set forth above, Defendant's motion for relief from judgment is DENIED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes the case.

IT IS SO ORDERED.

HON. JAMES M. MACERONI P61759
Circuit Court Judge

TRUE COPY
MILLER
COUNTY CLERK
DEPUTY CLERK

Date: December 12, 2019
JMM/aes