UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LASHAWN REYNOLDS,

Petitioner,

v.

Case No. 00-10413-BC
Honorable David M. Lawson

PAUL RENICO,

Respondent.
_______________________________________/

OPINION AND ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner LaShawn Reynolds, a state prisoner currently confined at the Southern Michigan Correctional Facility in Jackson, Michigan, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitioner was convicted of second-degree murder following a jury trial in the Recorder's Court for the City of Detroit in 1997 and sentenced to 20 to 30 years imprisonment. The petitioner asserts that he is entitled to habeas relief because the prosecution failed to present sufficient evidence of the predicate felony of larceny to support the charged offense of first-degree felony murder and that his conviction for second-degree murder is the result of an improper compromise verdict. The Court finds that the state courts' adjudication of this claim was not contrary to or an unreasonable application of federal law and therefore will deny the petition.

I.

The petitioner's conviction arises from the death of Jacob Thomas, whose body was found inside the trunk of a white Oldsmobile rental car parked in the Northland Mall parking lot in Southfield, Michigan on December 16, 1995. Forensic testimony established that

Thomas had been struck 13 to 14 times with a blunt force object, like a hammer, resulting in his death. No wallet, money, or cellular devices were recovered from the scene.

At trial, Gerald Bovey, Thomas's friend, testified that he saw Thomas on December 15, 1995 and that Thomas was carrying approximately $2,000 in cash. When Bovey spoke to Thomas later that evening, Thomas said that he was going to meet with the petitioner to collect $400 that the petitioner owed him. Bovey never heard from Thomas again. Thomas' brother subsequently informed him of Thomas' death. Bovey helped direct police to the petitioner's Ohio Street residence. Bovey also testified that Thomas obtained money by robbing liquor stores and was known to carry a cellular phone, a pager, and large sums of cash.

Nicole Moore, Thomas's girlfriend, testified that she and Thomas had rented the white Oldsmobile using stolen identification and credit cards belonging to a woman named Sherryl Hutchinson. Thomas was driving the rental car when Moore saw him on December 15, 1995. Moore testified that Thomas was in possession of a few thousand dollars, a cellular phone, and a pager that day. Thomas told her that he was meeting the petitioner around 6:00 p.m. to collect $400 owed to him. Moore received two telephone calls from Thomas that night, one at 7:05 p.m. and one at 7:30 p.m. During those conversations, Thomas told her that the petitioner was taking him to several different houses and that the petitioner was "bullshitting" him about the money. Moore did not hear from Thomas again after the second call. Southfield police subsequently notified her of Thomas' death.

Sherrie Jones, the petitioner's girlfriend, also testified at trial. She stated that she and the petitioner had been living with the petitioner's aunt on Ohio Street during part of 1995 but were planning to move into a house on Manor Street in Detroit on December 18, 1995. She

and the petitioner had to do some work on the house before moving, including painting and installing new carpet. On December 15, 1995, Jones went to school at 8:00 a.m. and did not see the petitioner again until 8:00 or 9:00 p.m. During a telephone conversation, the petitioner told her that he was meeting with Thomas that day. When the petitioner picked up Jones that evening, their child became sick around midnight. The petitioner and Jones took the child to the hospital and remained there for three or four hours before returning home.

Jones testified that the petitioner was home when she woke up around 9:00 a.m. on December 16, 1995. The petitioner then left to go to the Manor Street house to accept furniture which was being delivered at 10:00 a.m. The petitioner returned around 11:00 a.m. and they went to TEC Furniture to pay for items that they had ordered on December 14, 1995 with a $75.24 deposit. The petitioner paid $1,100 in cash for the furniture. The petitioner left Jones at a friend's house that afternoon and she did not see him again until about 5:00 p.m. when they went to a Home Depot store to purchase $195 worth of supplies for the house and then traveled to the Northland Mall for dinner. Jones also testified that the petitioner had told her that Thomas had arranged for the delivery of furniture, which had been purchased with stolen or forged checks. The furniture was to be taken to the Manor Street house, but Thomas would be out of the house by December 18, 1995. Jones stated that the petitioner had received money from relatives and also earned money working for his aunt.

On December 20, 1995, Jones received a telephone call from the petitioner while he was at the Southfield Police Department. He told her that the police were threatening to prosecute him for dogfighting because he was unable to assist them in the investigation of Thomas'

death. The petitioner asked Jones to paint over dog blood that was in the driveway at the Manor Street house, which she did that night.

John Stickle, an evidence technician with the Southfield Police Department, testified that he went to the Manor Street residence with other police officers on two occasions. Stickle took photographs of the blood stains in the driveway and a sample of one stain that was not covered with paint or varnish. His samples were sent to the Michigan State Police for testing. Stickle also testified that he observed stains on the basement ceiling and floor of the Manor Street house. He pulled back carpeting and tiles in the hallway above this portion of the basement and discovered dried blood stains. Stickle removed samples of wood for testing. Expert testimony and DNA testing established that the blood stains recovered from the floor samples were consistent with Jacob Thomas' blood.

Southfield Police Detective William Shadwell testified that he spoke to the petitioner at the Manor Street house on December 20, 1995 and noticed blood on the driveway. The petitioner stated that the blood stain was dog blood, and he willingly went to the police station for questioning. The petitioner made a telephone call from the station and submitted a written statement. The petitioner also told Shadwell that he had not borrowed money from Thomas, and that Thomas had given him $200 with no expectation of repayment. The petitioner also told Shadwell that he had $80 to repay Thomas on December 15, 1995. The petitioner explained that he had received sums of money from relatives and had earned money working for his aunt. The petitioner told Shadwell that he was with Thomas from approximately 5:30 p.m. until 7:30 p.m. on December 15, 1995. The next day, the petitioner was at the Manor Street house doing repairs and went to Builder's Square twice. He returned to the Ohio Street

house to bring Sherrie Jones food, and the two of them later went to TEC Furniture. He then dropped off Jones at a friend's house. The petitioner denied being involved in Thomas' death.

Shadwell also testified that the petitioner was scheduled to take a polygraph examination on December 21, 1995, but did not appear. At Shadwell's request, the petitioner went to the police station for questioning on December 29, 1995. The petitioner told police that on December 16, 1995 he went to the Manor Street house at 8:30 a.m. and waited for furniture to be delivered. At 10:00 a.m., he brought food to Jones at the Ohio Street house. Later, he and Jones went to pay for some furniture, and he dropped Jones off at her friend's house. The petitioner did not know how blood got into the Manor Street house, and he denied killing Thomas. The petitioner also told Shadwell that Thomas had agreed to pay him $500 to use the Manor Street house as a delivery point for furniture purchased with stolen checks. Police officers Michael Cishke and Mark Zacks also testified about similar statements that the petitioner made to them during their investigation of Thomas' murder.

Southfield Police Detective John Rogatski testified that he spoke with Sherrie Jones on December 22 and 26, 1995. She told him that the petitioner was already gone when she woke upon at 8:30 a.m. on December 16, 1995 and that he returned home around 10:00 or 11:00 a.m. They then went to the furniture store. At about 6:15 p.m., the petitioner dropped her off at the Northland Mall. The petitioner returned 30 minutes later and they went to Jones' mother's house at about 7:45 p.m. She was unaware of a dog fight at the Manor Street house, but painted over the blood in the driveway on the petitioner's instructions.

At the close of the prosecution's case, the defense moved for a directed verdict, which the trial court denied. The defense then called three of the petitioner's aunts to testify on his

behalf. Joyce Byrd stated that she owned the Manor Street house and had used it as rental property. The house was vacant between October and December 15, 1995. She gave the petitioner the house and he was to move in on December 18, 1995. She stated that the petitioner worked as an independent contractor for her construction company and that she paid him $500 to $700 per week, mostly in cash. Delores Castillo testified that she had given the petitioner $500 as a gift and had delivered several hundred dollars in cash gifts from other relatives to him on December 15, 1995. Gloria Washington testified that the petitioner, Jones, and their daughter lived with her for two months at the Ohio Street house and that she paid $899 to have carpeting installed at the Manor Street house for them on December 18, 1995. She also stated that the petitioner and Jones were at the hospital with their child during the early morning hours on December 16, 1995.

At the close of trial, the jury found the petitioner guilty of second-degree murder. The trial court subsequently sentenced him to 20 to 30 years imprisonment.

Following his conviction and sentencing, the petitioner filed an appeal as of right in the Michigan Court of Appeals, raising several claims of error, including the claim raised in the present petition. The Michigan Court of Appeals affirmed the petitioner's conviction and sentence. *People v. Reynolds*, No. 205528, 1999 WL 33452704 (Mich. Ct. App. March 26, 1999). The petitioner then filed an application for leave to appeal in the Michigan Supreme Court, which was denied. *People v. Reynolds*, 461 Mich. 901, 603 N.W.2d 642 (Mich. 1999).

The petitioner, through legal counsel, filed the present petition for a writ of habeas corpus on October 25, 2000, asserting that there was insufficient evidence of the predicate felony of larceny to support a first-degree murder charge and that his conviction for second-

degree murder was the result of an improper compromise verdict. Respondent filed an answer to the petition on April 2, 2001 asserting that the petition should be denied for lack of merit.

II.

The petitioner's claims are reviewed against the standards established by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (AEDPA). This Act "circumscribe[d]" the standard of review federal courts must apply when considering applications for a writ of habeas corpus. *See Wiggins v. Smith*, 123 S. Ct. 2527, 2534 (2003). The AEDPA applies to all habeas petitions filed after the effective date of the Act, April 24, 1996. *Lindh v. Murphy*, 521 U.S. 320, 335 (1997). Because the petitioner's application was filed after that date, the provisions of the AEDPA, including the amended standard of review, apply to this case.

As amended by the AEDPA, 28 U.S.C. § 2254(d) 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). Therefore, federal courts must accept a state court's adjudication of a petitioner's claims unless the state court's decision was contrary to or involved an unreasonable application of clearly established federal law. *Franklin v. Francis*, 144 F.3d 429, 433 (6th Cir.

1998). Mere error by the state court will not justify issuance of the writ; rather, the state court's application of federal law "must have been 'objectively unreasonable.'" *Wiggins*, 123 S. Ct. at 2535 (internal citation omitted). Additionally, this Court must presume the correctness of state court factual determinations. 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct."); *see also Cremeans v. Chapleau*, 62 F.3d 167, 169 (6th Cir. 1995) ("We give complete deference to state court findings unless they are clearly erroneous.").

The United States Supreme Court has explained the proper application of the "contrary to" clause as follows:

> A state-court decision will certainly be contrary to [the Supreme Court's] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases. . . .
>
> A state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [the Court's] precedent.

Williams v. Taylor, 529 U.S. 362, 405-06 (2000).

The Supreme Court held that a federal court should analyze a claim for habeas corpus relief under the "unreasonable application" clause of § 2254(d)(1) "when a state-court decision unreasonably applies the law of this Court to the facts of a prisoner's case." *Id.* at 409. The Court defined "unreasonable application" as follows:

> [A] federal habeas court making the "unreasonable application" inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable. . . .
>
> [A]n *unreasonable* application of federal law is different from an *incorrect* application of federal law. . . . Under § 2254(d)(1)'s "unreasonable application"

> clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.

Id. at 409, 410-11. *See also McAdoo v. Elo*, 346 F.3d 159, 165-66 (6th Cir. 2003); *Rockwell v. Yukins*, 341 F.3d 507, 512 (6th Cir. 2003) (en banc); *Lewis v. Wilkinson*, 307 F.3d 413, 418 (6th Cir. 2002).

In this case, the petitioner asserts that he is entitled to habeas relief because the prosecution presented insufficient evidence of the predicate felony of larceny to support a first-degree felony murder charge. The petitioner further argues that the fact the jury convicted him of only second-degree murder does not cure this error because the jury never should have ben permitted to consider a charge unlawfully submitted to them, since it improperly might have formed the basis for a compromise verdict. The petitioner notes that this theory is well accepted by the Michigan courts. *See People v. Vail*, 393 Mich. 460, 462-63, 227 N.W.2d 535 (1975).

This claim was presented to and rejected by the Michigan courts on the petitioner's direct appeal. The Michigan Court of Appeals held that:

> When viewing a denial of a motion for a directed verdict, this Court must consider the evidence presented by the prosecution up to the time the motion was made in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v. McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994). Circumstantial evidence and reasonable inferences therefrom may be sufficient to prove the elements of a crime. *Id*.
>
> To establish the crime of felony murder, the prosecution must present proofs from which the jury could rationally find that, while committing the underlying offense, the defendant acted with the intent to kill, with the intent to do great bodily harm, or with wanton and wilful disregard of the likelihood that the natural tendency of the defendant's behavior was to cause death or great bodily harm. *McKenzie, supra*, 206 Mich App 428. The underlying felony in this case was larceny.

> In order to prove a larceny, the prosecutor must show the following: (1) an actual or constructive taking of goods or property, (2) an asportation of the same, (3) with an intent to permanently deprive the owner, (4) of property that does not belong to the defendant, (5) against the will and without the consent of the owner. [*People v Edwards*, 171 Mich App 613, 617; 431 NW2d 83 (1988).]
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> Given that the victim was hit in the head with a hammer a minimum of thirteen times, we conclude that a rational trier of fact could determine that the malice element was established beyond a reasonable doubt. *People v. Hughey*, 186 Mich App 585, 592; 464 NW2d 914 (1990). As for establishing the intent to commit the larceny, two witnesses testified that on the night before the victim died he was carrying approximately two thousand dollars and was going to see defendant to collect money that defendant owed him. No money was found on the victim's body. Furthermore, two days before the murder, defendant had paid a minimal deposit on furniture for which, immediately after the victim's death, he paid cash in full and also made cash purchases at another store. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that all of the elements of larceny were proven beyond a reasonable doubt. Therefore, the trial court properly submitted the issue of felony murder to the jury.

People v. Reynolds, 1999 WL 33452704, at *2.

The claim that the possibility of a compromise tainted the jury deliberations and implicated the petitioner's due process rights was raised in *Daniels v. Burke*, 83 F.3d 760 (6th Cir. 1996). There the court expressed uncertainty about whether it was required to reach the question of the sufficiency of the evidence, noting that "[s]ome courts, under similar facts have concluded that the submission to the jury of a charge constituted harmless error in light of petitioner's acquittal on that charge." *Id.* at 765 n.4 (citations omitted). The panel avoided the prejudice question, however, because it found that the evidence of premeditation was unambiguously sufficient and affirmed the district court's denial of the writ on that basis.

Although the *Daniels* court addressed the merits of the claim, it deserves restating that federal courts now may grant habeas relief only if the state court's adjudication of a claim resulted in a decision that was contrary to, or an unreasonable application of, clearly

established Supreme Court precedent. 28 U.S.C. § 2254(d)(1). "[A] federal court must find a violation of law 'clearly established' by holdings of the Supreme Court, as opposed to its *dicta*, as of the time of the relevant state court decision." *Harris v. Stovall*, 212 F.3d 940, 944 (6th Cir. 2000) (quoting *Williams*, 529 U.S. at 412).

This Court previously has held that the Supreme Court's decision in *Price v. Georgia*, 398 U.S. 323 (1970), "clearly established" "the rule that the unconstitutional submission of a greater charge to a jury is not harmless beyond a reasonable doubt simply because the jury convicts on a lesser, but properly submitted, charge." *Williams v. Jones*, 231 F.Supp.2d 586, 594 (E.D. Mich. 2002). In *Price*, the defendant was charged with murder and convicted of manslaughter. The Supreme Court found that the murder charge has been improperly submitted to the jury, and the Court rejected the State's argument that the jury's verdict rendered that error harmless because the Court could not determine whether the murder charge may have "induced the jury to find [the defendant] guilty of the less serious offense of voluntary manslaughter rather than to continue to debate his innocence." *Price*, 398 U.S. at 331.

In this case, the petitioner contends that his due process rights were violated because there was insufficient evidence to support the charge of first-degree felony murder. The state court of appeals held that the evidence satisfied the standard set forth *People v. McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994). *McKenzie* relies on authority that is traced to the Michigan Supreme Court's decision in *People v. Hampton*, 407 Mich. 354, 285 N.W.2d 284 (1979), which, in turn, is based on *Jackson v. Virginia*, 443 U.S. 307 (1979)**. There is no question that "the Due Process Clause protects the accused against conviction except upon proof**

beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." ***In re Winship,*** **397 U.S. 358, 364 (1970). But the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction is, "whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt."** ***Jackson*****, 443 U.S. at 318.**

> **But this inquiry does not require a court to "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.**

Id. **at 318-19 (internal citation and footnote omitted) (emphasis in original). This "standard must be applied with explicit reference to the substantive elements of the criminal offense as defined by state law."** ***Id*****. at 324 n.16.**

In this case, the Court finds that the state court of appeals correctly set forth the elements of larceny, the predicate offense alleged to furnish the aggravating element that rendered an intentional killing murder in the first degree under Michigan law. Those elements may be proved by circumstantial evidence. *See People v. Jolly*, 442 Mich. 458, 466, 502 N.W.2d 177, 180 (1993). Witness testimony established that the petitioner met with Thomas shortly before Thomas was killed, that the petitioner owed Thomas money, that Thomas was carrying large sums of cash that night, and that the petitioner had a large sum of cash available to pay for furniture and other items the day after the murder. This Court cannot say that the state courts' conclusion that this evidence was sufficient was contrary to or constituted an unreasonable application of federal law. Submitting the felony murder charge to the jury did not amount to a constitutional violation in this case.

III.

The charge of felony murder was properly submitted to the jury. Furthermore, sufficient evidence was advanced at trial to support the petitioner's conviction for second-degree murder. The Michigan Court of Appeals's decision affirming the petitioner's conviction was neither contrary to, nor an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States.

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus [dkt #1] is **DENIED**.

_______________/s/___________________
DAVID M. LAWSON
United States District Judge

Dated: January 8, 2004

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