

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**October 18, 2023**

**Christopher M. Wolpert**  
**Clerk of Court**

JOSEPH R. CYR,  
Petitioner - Appellant,

v.

SCOTT CROW, Director of the Oklahoma  
Department of Corrections,  
Respondent - Appellee.

No. 23-6020  
(D.C. No. 5:19-CV-01029-HE)  
(W.D. Okla.)

**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

Before **TYMKOVICH, EID,** and **CARSON,** Circuit Judges.

Joseph R. Cyr, a pro se Oklahoma inmate, seeks a certificate of appealability (COA) to challenge the denial of his 28 U.S.C. § 2254 habeas petition. *See* 28 U.S.C. § 2253(c)(1)(A) (requiring a COA to appeal the denial of a § 2254 petition). Because the denial of relief is not reasonably debatable, we deny a COA and dismiss this matter.

I

An Oklahoma jury convicted Cyr on two counts of first-degree murder with malice aforethought for killing a pregnant woman and her fetus. The woman was a sex

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\* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

worker with whom Cyr had intercourse before stabbing 29 times. Her partially decomposed body was found near a trail approximately one month after she disappeared.

The Oklahoma Court of Criminal Appeals (OCCA) upheld Cyr's convictions on direct appeal, and the state courts denied postconviction relief. Cyr then filed a federal habeas petition, which the district court determined contained both exhausted and unexhausted claims. The district court permitted Cyr to exhaust all claims, upon which he returned to federal court and filed an amended habeas petition asserting ten claims. A magistrate judge issued a comprehensive report and recommendation concluding the petition should be denied. Cyr objected to the denial of six claims, and over his objections, the district court adopted the report and recommendation, denied the six claims on their merits, ruled he waived further review of the other claims to which he did not object, and denied a COA. Cyr now seeks a COA from this court on the six claims he pursued in the district court.

## II

To obtain a COA, Cyr "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "The COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Our analysis accounts for the deferential treatment afforded state court decisions by the Antiterrorism and Effective Death Penalty Act (AEDPA). *Dockins v. Hines*, 374 F.3d 935, 938 (10th Cir. 2004). Under AEDPA, federal habeas relief is prohibited on any claim adjudicated on the merits in state court

proceedings unless the state court’s decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or “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). “We look to the District Court’s application of AEDPA to [Cyr’s] constitutional claims and ask whether that resolution was debatable amongst jurists of reason.” *Miller-El*, 537 U.S. at 336.

*A. Claim 1: Sufficiency of the Evidence*

Cyr first claims there was insufficient evidence to sustain his convictions. Under *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), the evidence is sufficient if, “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.” “Review of sufficiency of the evidence under AEDPA adds an additional degree of deference, and the question becomes whether the OCCA’s conclusion that the evidence was sufficient constituted an unreasonable application of the *Jackson* standard.” *Simpson v. Carpenter*, 912 F.3d 542, 592 (10th Cir. 2018) (internal quotation marks omitted).

Rejecting this claim on direct appeal, the OCCA described the extensive evidence underlying Cyr’s convictions, including evidence showing: he had sexual intercourse with the woman on the night of the murders, he was familiar with the area where her body was discovered, he lied to police and attempted to evade their investigation, he cleaned his truck and removed its seat covers to conceal evidence, and decomposition of the woman’s body indicated the approximate timeframe when it was abandoned, which

conformed to the time of her calls and texts with Cyr, supporting the prosecution's assertion that she was killed on the night she disappeared. Given this and other evidence, the OCCA determined that any rational trier of fact could have found Cyr guilty beyond a reasonable doubt. The district court concluded that the OCCA's decision was not an unreasonable application of *Jackson*. Although Cyr contends his convictions were procured with circumstantial evidence and by stacking inference upon inference, the question remains whether the district court's conclusion is reasonably debatable. Given the evidence presented to the jury, it is not.<sup>1</sup>

*B. Claim 2: Jury Instruction*

Cyr next contends the trial court improperly instructed the jury on the element of intent necessary to sustain his conviction for the death of the fetus, thereby violating his right to a fair trial. The federal standard is whether the instruction relieved the prosecution of its burden to prove every element of the crime beyond a reasonable doubt. *See Sandstrom v. Montana*, 442 U.S. 510, 523 (1979).<sup>2</sup> The jury was instructed that Oklahoma law does not require evidence that Cyr knew the woman was pregnant or that he intended to kill the fetus. The OCCA determined the instruction accurately stated the law in Oklahoma and, under the doctrine of transferred intent, Cyr's intent to kill the woman transferred to the fetus to establish the element of intent. Although Cyr disputes

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<sup>1</sup> To the extent Cyr's argument implicates the propriety of the jury instructions, we consider it in the context of claim 2.

<sup>2</sup> Cyr's contention that the instruction was allegedly incorrect under state law provides no basis for federal habeas relief. *See Estelle v. McGuire*, 502 U.S. 62, 71-72 (1991).

the OCCA's application of the transferred-intent doctrine, which he says the jury never considered, the district court correctly recognized that the OCCA's determination is binding on federal habeas review. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (overruling circuit-court conclusion that transferred-intent doctrine was inapplicable under state law, because "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" (emphasis added)). The district court therefore concluded that the OCCA's decision was neither contrary to, nor an unreasonable application of, the federal standard. Bound by the OCCA's determination that the transferred-intent doctrine applied under Oklahoma law, the district court's conclusion is not reasonably debatable.

*C. Claim 3: Prior Bad Acts*

Cyr also claims he was denied a fair trial by the admission of evidence disclosing prior bad acts: his sexual habits and disdain for using condoms, his efforts to persuade past sexual partners to abort their pregnancies, and a video he sent depicting a cow being slaughtered. The OCCA rejected this claim on direct appeal, concluding that evidence of Cyr's sexual habits and disdain for using condoms was probative of motive because it clashed with the woman's insistence on using condoms and her strong-willed personality. The OCCA also determined that evidence Cyr demanded that past sexual partners have abortions was irrelevant to motive, but he failed to show prejudice and thus its admission was harmless. Similarly, the OCCA ruled that evidence of the cow-slaughtering video was irrelevant but, again, Cyr failed to show prejudice. The district court concluded the OCCA did not unreasonably apply clearly established federal law.

Reasonable jurists would not debate the district court’s conclusion. To warrant relief, admission of the prior bad-act evidence must have denied Cyr a fundamentally fair trial. *See Estelle v. McGuire*, 502 U.S. 62, 67-68, 70 (1991). The evidence of Cyr’s sexual habits and disdain for using condoms was probative of motive, and its admission did not result in a trial that was fundamentally unfair. *See id.* at 68-69 (explaining that evidence of victim’s prior injuries was admissible under state law to establish intent and did not result in a fundamentally unfair trial); Okla. Stat. tit. 12, § 2404(B) (providing that evidence of other bad acts may be admitted to show motive). Neither does the improperly admitted evidence—that Cyr demanded that previous sexual partners abort their pregnancies and that he sent the cow-slaughtering video—warrant relief, because, in light of all the other evidence before the jury, this evidence did not render the trial fundamentally unfair.<sup>3</sup>

*D. Claim 4: Cumulative Error*

Cyr next contends cumulative error warrants habeas relief. The OCCA rejected this claim on direct appeal, concluding there was no cumulative error because the aggregated errors did not affect the outcome of the proceedings. The federal standard requires a “substantial and injurious effect or influence in determining the jury’s verdict.” *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993) (internal quotation marks omitted). The district court, in adopting the magistrate judge’s report and recommendation, determined

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<sup>3</sup> Cyr contends the district court’s decision is debatable under authority from this court, but he must support his claim with clearly established Supreme Court precedent, without which habeas relief is unavailable. *See Simpson*, 912 F.3d at 568.

the OCCA’s decision was not contrary to, or an unreasonable application of, the federal standard. Considering in the aggregate the two errors discussed above, in view of the rest of the evidence, the district court’s decision is not reasonably debatable. *See Cargle v. Mullin*, 317 F.3d 1196, 1220 (10th Cir. 2003) (explaining that cumulative-error analysis is “expressed as an aggregate of all errors found to be harmless” and “determined by conducting the same inquiry as for individual error” (internal quotation marks omitted)).

*E. Claims 5 & 6: Ineffective Assistance of Counsel*

Last, Cyr claims his appellate counsel rendered ineffective assistance. Under *Strickland v. Washington*, he must show counsel’s performance was both deficient and prejudicial. 466 U.S. 668, 688, 692 (1984). Our assessment of counsel’s performance is always “highly deferential,” but “[t]he challenge is even greater for a petitioner under § 2254, as our review in such circumstances is doubly deferential.” *Byrd v. Workman*, 645 F.3d 1159, 1168 (10th Cir. 2011) (internal quotation marks omitted). “[W]e defer to the state court’s determination that counsel’s performance was not deficient and, further, defer to the attorney’s decision in how to best represent a client.” *Id.* (internal quotation marks omitted).

To succeed on an [ineffective-assistance] claim premised on the failure to raise an issue on appeal, a petitioner must show both that (1) appellate counsel performed deficiently in failing to raise the particular issue on appeal and (2) but for appellate counsel’s deficient performance, there exists a reasonable probability the petitioner would have prevailed on appeal.

*Davis v. Sharp*, 943 F.3d 1290, 1299 (10th Cir. 2019). When a petitioner asserts counsel was deficient in failing to raise an issue on appeal, we examine the merits of the omitted

issue, and, if meritless, “its omission will not constitute deficient performance.” *Id.* (internal quotation marks omitted).

Cyr contends appellate counsel was ineffective in failing to raise trial counsel’s alleged ineffectiveness in failing to seek suppression of evidence from his cellphone, home, trucks, and girlfriend without a valid warrant. He also contends appellate counsel was ineffective in failing to raise trial counsel’s alleged ineffectiveness in failing to object to prosecutorial misconduct—misrepresenting that his truck’s seat covers were stained with blood.<sup>4</sup> The state postconviction court rejected these claims, and the OCCA affirmed the denial of relief. The federal district court concluded that the OCCA’s decision was not an unreasonable application of federal standards under *Strickland*.

The district court’s decision is not reasonably debatable. The state postconviction court observed that Cyr “fail[ed] to demonstrate that any evidence admitted at trial would have been properly excluded had counsel sought suppression based on the alleged Fourth Amendment violations.” *R.*, Vol. IV at 717. Indeed, although Cyr asserts trial counsel should have sought to suppress the evidence in question because his Fourth Amendment rights were violated, he provides no evidentiary basis to support a suppression motion. *See Harte v. Bd. of Comm’rs*, 864 F.3d 1154, 1162 (10th Cir. 2017) (explaining a warrant is invalid “if there is substantial evidence to support deliberate falsehood or reckless disregard for the truth, and the exclusion of false statements would undermine the

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<sup>4</sup> Cyr raised this theory during state postconviction proceedings in two separate ineffective-assistance-of-appellate-counsel claims, one based on 24 instances of alleged prosecutorial misconduct, *see R.*, Vol. IV at 382-84 (Subclaim 14, instance 5), and a second based on 13 instances of alleged misconduct, *see id.* at 389 (Subclaim 5).



existence of probable cause”). Without making that showing, he cannot establish that his appellate counsel’s performance was deficient in failing to pursue trial counsel’s alleged ineffectiveness.

Neither can Cyr establish that his appellate counsel was ineffective in failing to raise trial counsel’s alleged ineffectiveness for failing to object to prosecutorial misconduct. The underlying claim required him to demonstrate that the prosecution’s discussion of stains on the truck seat covers “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). The state postconviction court ruled that the prosecution’s comments “were appropriately based on the evidence presented and reasonable inferences that could be drawn from it.” R., Vol. IV at 718. Indeed, the trial record confirms the prosecution accurately represented to the jury that presumptive testing of the seat covers for blood was positive but subsequent lab testing did not confirm blood was present. Although Cyr cites *Miller v. Pate*, 386 U.S. 1 (1967), to argue that a prosecutor’s knowing misrepresentation of evidence constitutes a denial of due process, there was no similar misconduct here. Consequently, Cyr fails to show that he was denied due process, that trial counsel was ineffective in failing to object, and that appellate counsel was deficient in failing to raise this claim on appeal. It follows, then, that the district court’s decision is not reasonably debatable.

III

For the foregoing reasons, we deny a COA and dismiss this matter.

Entered for the Court

Joel M. Carson III  
Circuit Judge