

Petitioner Gott appealed the trial court's ruling.⁸ He argued that the trial court erred by 1) improperly excluding expert testimony central to his self-defense argument, 2) improperly excluding and/or limiting impeachment evidence, and 3) issuing a decision against the manifest weight of the evidence.⁹ In 2013, the Ohio Sixth District Court of Appeals affirmed the trial court's decision.¹⁰

Although Petitioner Gott failed to file a timely appeal to the Ohio Supreme Court, the court granted his motion for leave to file a delayed appeal.¹¹ With that appeal, Gott argued that the trial court erred by 1) improperly excluding expert testimony central to his self-defense argument, and 2) improperly excluding and/or limiting impeachment evidence.¹² In May 2014, the Supreme Court of Ohio declined to accept jurisdiction of the appeal.¹³

On June 8, 2016, Petitioner Gott filed a petition for a writ of habeas corpus under [28 U.S.C. § 2254](#) in this Court.¹⁴ Gott argues that the trial court erred by 1) improperly excluding expert testimony central to his self-defense argument, and 2) improperly excluding and/or limiting evidence of the victim's character.

On July 21, 2016, Magistrate Judge McHargh issued an R&R recommending that the petition be denied.¹⁵ The R&R finds that on ground one, Gott failed to establish that the state court's evidentiary decision was contrary to clearly established federal law.¹⁶ On ground two, the

⁸ Doc. [9-1](#), Ex. 17, 18.

⁹ Id., Ex. 19.

¹⁰ Id., Ex. 20.

¹¹ Id., Ex. 28.

¹² Id., Ex. 29.

¹³ Id., Ex. 31.

¹⁴ Doc. [1](#).

¹⁵ Doc. [15](#).

¹⁶ Id. at 14.

R&R finds that Gott's claim is procedurally defaulted because he failed to present his claim as a federal-law violation in the state courts.¹⁷

Petitioner objects to the R&R.¹⁸ He argues that his first ground for relief should succeed because the state court's decision was contrary to clearly established federal law, namely the Supreme Court's *Daubert v. Merrell Dow Pharm., Inc.*¹⁹ decision. He further argues that his second ground for relief was properly presented as a federal issue in state court.

II. Legal Standard

The Federal Magistrates Act requires a district court to conduct a de novo review only of those portions of the R&R to which the parties have properly objected.²⁰ A district court may adopt without review parts of the R&R to which no party has objected.²¹

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")²² controls habeas review of state court proceedings. AEDPA generally requires that a petitioner exhaust all of his available state court remedies before seeking habeas relief.²³ To satisfy the exhaustion requirement, the state courts must have "one full opportunity to resolve any constitutional issues."²⁴ A district court will not consider a habeas petitioner's "contentions of federal law . . . not resolved on the merits in the state proceeding due to [a petitioner's] failure to raise them there as required by state procedure."²⁵

¹⁷ *Id.* at 14.

¹⁸ Doc. 18.

¹⁹ [509 U.S. 579 \(1993\)](#).

²⁰ [28 U.S.C. § 636\(b\)\(1\)](#).

²¹ [Thomas v. Arn](#), 474 U.S. 140, 149 (1985).

²² [28 U.S.C. § 2254](#).

²³ [28 U.S.C. § 2254\(b\)\(1\)\(A\)](#).

²⁴ [O'Sullivan v. Boerckel](#), 526 U.S. 838, 838 (1999).

²⁵ [Wainwright v. Sykes](#), 433 U.S. 72, 87 (1977); see also [Lundgren v. Mitchell](#), 440 F.3d 754, 763–64 (6th Cir. 2006).

Nor will a district court consider alleged violations of state law.²⁶ However, habeas relief may be available if an alleged error of state law subjected the petitioner to a “fundamentally unfair” criminal process.²⁷ Only when a state ruling “offend[s] some principle of justice so rooted in the traditions and conscience of our people” does it constitute fundamental unfairness.²⁸ The habeas petitioner bears the burden of showing that “the principle of procedure violated by the rule (and allegedly required by due process)” is fundamental.²⁹

III. Discussion

A. Expert Testimony

Petitioner Gott argues that the trial court’s exclusion of expert testimony was contrary to clearly established federal law, specifically the Supreme Court’s *Daubert v. Merrell Dow Pharm., Inc.* decision. Petitioner’s argument fails.

A state evidentiary ruling violates due process “only where it ‘is so egregious that it results in a denial of fundamental fairness.’”³⁰ The Supreme Court has “defined the category of infractions that violate ‘fundamental fairness’ very narrowly.”³¹

At trial, Petitioner Gott attempted to introduce expert testimony regarding whether he had a reasonable belief of imminent harm for purposes of his self-defense argument.³² The trial court found that the testimony “lack[ed] the appropriate scientific basis,” and that whether Petitioner

²⁶ [Smith v. Morgan](#), 371 F. App’x 575, 582 (6th Cir. 2010) (citing 28 U.S. § 2254(a)).

²⁷ [Williams v. Anderson](#), 460 F.3d 789, 816 (6th Cir. 2006).

²⁸ [Bey v. Bagley](#), 500 F.3d 514, 521 (6th Cir. 2007) (quoting [Montana v. Egelhoff](#), 518 U.S. 37, 43 (1977)).

²⁹ [Bey](#), 500 F.3d at 521.

³⁰ [Hudson v. Lafler](#), 421 F. App’x 619, 627–28 (6th Cir. 2011) (citing [Bugh v. Mitchell](#), 329 F.3d 496, 512 (6th Cir. 2003)).

³¹ [Dowling v. United States](#), 493 U.S. 342, 352 (1990).

³² Doc. [9-1](#), Ex. 4 at 2.

had a reasonable belief of imminent danger was “a matter for the jury to consider, as it lies within common knowledge and does not require any scientific explanation.”³³

The state appellate court considered the propriety of the trial court’s decision under [Ohio Rule of Evidence 702](#). The appellate court found that expert psychological testimony is only admissible in support of self-defense arguments in very rare circumstances, none of which applied to Petitioner’s case.³⁴

Petitioner Gott acknowledges that both the trial and appellate courts relied on Ohio law in their analyses.³⁵ He argues, however, that the trial court violated federal law because Ohio has “codified” the Supreme Court’s Daubert decision³⁶ and the “Federal Rules of Evidence . . . are relevant to [his] conviction in state court.”³⁷

Petitioner Gott is mistaken. Daubert governs application of the Federal Rules of Evidence, which are not relevant to proceedings in Ohio state courts.³⁸ Instead, Ohio courts apply their own set of evidentiary rules. And federal habeas courts “presume that [Ohio courts] correctly interpret[] Ohio evidence law.”³⁹

Because Petitioner Gott’s argument is based on a state-law question, he must show that the decision “contradicts Supreme Court precedent and violates a fundamental right.”⁴⁰ Petitioner fails to make such a showing—the “very narrow[]” category of fundamental fairness violations is not implicated here.⁴¹

³³ Id. at 3.

³⁴ Doc. [9-1](#), Ex. 21 at 8-9.

³⁵ Doc. [18](#) at 6.; see also Doc. [9-1](#), Ex. 4 at 1-2; Ex. 21 at 6-11.

³⁶ [509 U.S. 579 \(1993\)](#).

³⁷ Doc. [18](#) at 5-6.

³⁸ [Norris v. Schotten](#), 146 F.3d 314 (6th Cir. 1998).

³⁹ [Small v. Brigano](#), 134 F. App’x 931, 936 (6th Cir. 2005).

⁴⁰ [Bey v. Bagley](#), 500 F.3d 514, 521 (6th Cir. 2007).

⁴¹ [Dowling v. United States](#), 493 U.S. 342, 352 (1990).

B. Character Evidence

Petitioner Gott also argues that the trial court improperly excluded and/or limited evidence of the victim's character at trial. Because Petitioner failed to exhaust this claim as a federal constitutional violation in state court, his argument fails.

Federal courts “do not have jurisdiction to consider a claim in a habeas petition that was not ‘fairly presented’ [as a matter of federal law] to the state courts.”⁴² Claims are “fairly presented” if there is “(1) reliance upon federal cases employing constitutional analysis; (2) reliance upon state cases employing federal constitutional analysis; (3) phrasing [of] the claim in terms of constitutional law or in terms sufficiently particular to allege a denial of a specific constitutional right; or (4) alleg[ation of] facts well within the mainstream of constitutional law.”⁴³

At trial, Petitioner sought to introduce evidence of the victim's propensity for violence to support his self-defense argument. On appeal, Petitioner Gott argued that the trial court allowed evidence that the victim sometimes possessed a firearm, but improperly excluded any details of those incidents.⁴⁴

In his brief, Petitioner did not allege a federal constitutional violation.⁴⁵ Nor did the appellate court's analysis address federal constitutional issues.⁴⁶ Because Petitioner's second ground for relief was presented as a state evidentiary question in the state courts, this Court does not have jurisdiction to consider the claim.

⁴² [McMeans v. Brigano](#), 228 F.3d 674, 681 (6th Cir. 2000) (quoting [Franklin v. Rose](#), 811 F.2d 322, 324–25 (6th Cir.1987)).

⁴³ *Id.* (citing [Franklin](#), 811 F.3d at 326).

⁴⁴ Doc. [9-1](#), Ex. 19 at 18.

⁴⁵ *Id.* at 15-19. Petitioner's brief does not cite any legal authority for support. A quotation from the trial court transcript mentions “405(b)” — a reference to Ohio Rule of Evidence 405(b) — which deals with admissibility of specific acts when they constitute an “essential element of a charge.”

⁴⁶ Doc. [9-1](#), Ex. 21 at 14-18.

IV. Conclusion

For the foregoing reasons, the Court **OVERRULES** Petitioner's objections to the R&R. The Court **ADOPTS** in whole Magistrate Judge McHargh's R&R and incorporates it fully herein by reference. The Court **DENIES** Petitioner's § 2254 petition. Moreover, the Court certifies that no basis exists upon which to issue a certificate of appealability.⁴⁷

IT IS SO ORDERED.

Dated: October 18, 2016

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁴⁷ [28 U.S.C. § 2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).