APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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U.S. COURT OF APPEALS

MIGUEL ANGEL BARRON, Petitioner-Appellant, v. RAYMOND MADDEN, Warden, Respondent-Appellee.	No. 18-56116 D.C. No. 2:16-cv-08912-CJC-DFM Central District of California, Los Angeles ORDER

Before: SILVERMAN and CALLAHAN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

APPENDIX B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MIGUEL ANGEL BARRON,

Petitioner,

v.

RAYMOND MADDEN, Warden,

Respondent.

No. CV 16-08912-CJC (DFM)

Report and Recommendation of United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable Cormac J. Carney, United States District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I.

BACKGROUND

A. Procedural History

In 2014, a jury convicted Miguel Angel Barron ("Petitioner") of second-degree murder, attempted murder, possession of a firearm by a felon, and possession of a firearm by a probationer. See 2 Clerk's Transcript ("CT") 99-

103.[1] The jury also found that Petitioner personally and intentionally discharged a firearm that caused great bodily injury and death. See 2 CT 100-01. The trial court sentenced Petitioner to a term of 65 years to life plus nine years in state prison. See 2 CT 217-20.

On direct appeal, Petitioner argued that the trial court erred by (1) excluding evidence of drugs in the victim's system and (2) instructing the jury that it "should" consider evidence of Petitioner's intoxication. See Dkt. 13, Respondent's Notice of Lodging, Lodged Document ("LD") 3. The California Court of Appeal modified the judgment by imposing court fees and awarding Petitioner custody credits but otherwise affirmed the judgment. See LD 6. Petitioner filed a petition for review with the California Supreme Court, see LD 9, which was summarily denied, see LD 10.

On December 1, 2016, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody in this Court raising the same claims as he did on direct appeal. See Dkt. 1 ("Petition"). Respondent filed an answer and accompanying memorandum of points and authorities. See Dkt. 12 ("Answer"). Petitioner did not file a traverse.

B. Summary of the Evidence Presented at Trial

The underlying factual summary is taken from the California Court of Appeal opinion.[2] Unless rebutted by clear and convincing evidence, these facts are presumed correct. See Crittenden v. Chappell, 804 F.3d 998, 1011 (9th Cir. 2015) (finding that state court's factual findings are presumed correct unless "overcome . . . by clear and convincing evidence"); 28 U.S.C. § 2254(e)(1).

Petitioner and his wife lived in a Littlerock, California home.

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[1] All citations to electronically-filed documents, with the exception of the Clerk's and Reporter's Transcripts, are to the CM/ECF pagination.

[2] In all quoted sections of the state appellate court's opinion, the term "defendant" has been replaced with "Petitioner."

Also living in the residence were: Petitioner's sister, Guadalupe Chavez; Ms. Chavez's five grandchildren; Petitioner's niece, Maria Maldonado; and Ms. Maldonado's boyfriend, Cesar Nande. Multiple domestic disagreements had arisen between Petitioner, Ms. Maldonado and Mr. Nande. On June 27, 2013, just after midnight, Petitioner fired one gunshot, severely injuring Ms. Maldonado and killing Mr. Nande. Petitioner had been drinking beer all day long prior to the shooting.

Ms. Chavez heard Petitioner talking on the telephone sometime in the afternoon of June 26. Petitioner told someone: "[C]ome on over. I don't want that fool to think I'm alone." An 11-year-old neighbor had heard Petitioner and Mr. Nande angrily yelling and arguing earlier in the evening, around 6 p.m. The argument arose because Petitioner had taken Mr. Nande's tools. Ms. Maldonado also heard the argument. When Ms. Chavez left for work around 10 p.m., Petitioner was drunk and mad. Ms. Chavez told Ms. Maldonado to avoid Petitioner. Ms. Chavez was Ms. Maldonado's mother. Mr. Nande's cousin, Ruben Garcia, lived nearby. Petitioner visited Mr. Garcia's home the evening of the shooting. Mr. Garcia testified Petitioner, who was drunk, had a rifle. Petitioner was attempting to load a bullet into the rifle.

Petitioner's long-time friend, Rodrigo Echeverri, testified for the prosecution. Mr. Echeverri received a telephone call from Petitioner around 4 p.m. Petitioner was having a problem with Mr. Nande. Petitioner made a reference to "boxing" and, according to Mr. Echeverri, said, "He might have to . . . settle something." Mr. Echeverri caught up with Petitioner at Mr. Garcia's house around 10 p.m. They returned to Petitioner's home shortly before midnight

and went into the backyard. Mr. Echeverri invited Mr. Nande to have a beer with them. Mr. Nande declined and went inside the house. Mr. Echeverri testified Petitioner became upset and began throwing things around. Mr. Echeverri said Petitioner was having a "tantrum." Petitioner apparently heard Ms. Maldonado on the telephone with an emergency operator. Mr. Echeverri heard Petitioner ask Ms. Maldonado: "What are you doing? . . . Why? I'm your uncle." Petitioner told Mr. Echeverri: "Get the hell out of here because it [is] going to get ugly. The police are coming." Mr. Echeverri jumped in his truck and began to leave.

Ms. Maldonado testified Petitioner had been drinking all day. Because of Petitioner's condition, around 3 or 4 p.m., she sent her children to stay with their father. By evening, Petitioner was drunk. Petitioner left the home around 10 p.m. and returned just before midnight. Petitioner, who had a smirk on his face and was intoxicated, walked in the front door holding a rifle. Petitioner went into the backyard and began firing the rifle into the air. Just after midnight, Ms. Maldonado telephoned an emergency operator. Ms. Maldonado told the operator Petitioner was firing the rifle in the backyard. She confirmed that her uncle, Petitioner, was drunk. Petitioner heard Ms. Maldonado on the telephone. In the recording of that call, Petitioner and Ms. Mald[o]nado can be heard arguing. Ms. Maldonado told Petitioner, "You can't be shooting." At trial, Ms. Mald[o]nado testified Petitioner said, "Call the cops on me, mother fucker, I'll shoot you right here." Petitioner shot Ms. Maldonado. The shooting occurred while Ms. Maldonado was still on the telephone with the emergency operator. Ms. Maldonado heard Mr. Nande say, "Oh, fuck." Petitioner held the rifle at his

waist and faced Ms. Maldonado. Mr. Nande was standing two or three feet away from Ms. Maldonado, to her right. A split second later, Ms. Maldonado heard and felt the gunshot. Mr. Nande said, "Oh, God, baby." The bullet entered Mr. Nande's back and exited his abdomen and also struck Ms. Maldonado in the arm.

Mr. Echeverri was attempting to back his truck out of Petitioner's driveway when he heard a single gunshot. Seconds later, Petitioner jumped into Mr. Echeverri's truck. Petitioner was still holding the rifle in his hands. Petitioner told Mr. Echeverri, "I had shot Cesar." Petitioner did not mention Ms. Maldonado. Petitioner said he wanted to be taken to San Bernardino. Mr. Echeverri testified: "He told me to take him to his . . . son's house." During the drive to San Bernardino, Petitioner removed his cellular telephone battery, then tossed the battery and the telephone out of the vehicle. Mr. Echeverri assumed Petitioner did not want to be tracked. Mr. Echeverri told a detective Petitioner's explanation for throwing the telephone out of the window of the truck, "Well, yeah, because he told me . . . that he didn't want to get tracked." When they arrived in San Bernardino, Petitioner's son told them to leave. Mr. Echeverri then drove Petitioner to relatives in Ventura County. Mr. Echeverri left Petitioner in Ventura and returned home. Three hours after arriving home, Mr. Echeverri was arrested. When interviewed by Detective Brandt House shortly thereafter, Mr. Echeverri quoted Petitioner as saying, "I killed him."

Petitioner testified in his own defense. He admitted he had been drinking all day and that he was drunk at the time of the shooting. Petitioner admitted there had been tension with Ms. Maldonado and Mr. Nande. Petitioner had known Mr. Nande to

use methamphetamine and cocaine. Petitioner feared Mr. Nande. Petitioner denied intending to shoot anyone.

Petitioner described the incident as follows. After Ms. Maldonado called the emergency operator, Petitioner went into his room and grabbed his rifle. He did so because he was on probation. It was his custom to keep one bullet in the rifle. He fired a shot into the air outdoors in order to discharge the one bullet. Petitioner admitted, however, that after discharging the bullet he cocked the gun. As a result, Petitioner admitted that, if there had been another bullet in the rifle, a weapon would have been in position to fire. When Petitioner entered the house, he tripped and hit the wall or a table and the rifle discharged. It was possible his finger was on the trigger. Petitioner testified: "I'm not sure about that. It is kind of fuzzy from drinking, being drunk."

Mr. Nande was standing up when Petitioner ran from the house. Petitioner was unsure whether Mr. Nande had been hit. He had no idea Ms. Maldonado had been shot. Once the shooting was over, Petitioner was unsure whether Mr. Nande had been shot. When questioned on direct examination, Petitioner was asked, "At the conclusion of the gun going off, did you have at least some idea that maybe Mr. Nande was shot?" Petitioner responded, "No, I didn't because he was standing up when I left."

Petitioner admitted tossing the rifle out the window during the drive to San Bernardino. Petitioner denied intentionally tossing his cellular telephone to avoid being tracked. He thought that when he threw the rifle, the telephone fell out with it. After Petitioner left San Bernardino, he intended to return to Littlerock, but he took the wrong freeway and ended up in Ventura, where he happened to

> have relatives. After the shooting, Petitioner shaved his facial hair. Petitioner said he was trimming his mustache and cut it the wrong way so he just shaved off all his facial hair. Petitioner took no steps to check on the welfare of Mr. Nande or Ms. Maldonado. Also, Petitioner took no steps to verify his wife's well-being. Petitioner's wife was blind and was due to undergo dialysis treatment the next day.

LD 6 at 2-5.

II.

STANDARD OF REVIEW

Petitioner's claims are subject to the provisions of the Antiterrorism and Effective Death Penalty Act ("AEDPA"). Under AEDPA, federal courts may grant habeas relief to a state prisoner "with respect to any claim that was adjudicated on the merits in State court proceedings" only if that adjudication:

> (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).

Overall, AEDPA presents "a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court." Burt v. Titlow, 571 U.S. 12, 19 (2013). AEDPA presents a "'difficult to meet' and 'highly deferential standard for evaluating state court rulings, which demands that state-court decisions be given the benefit of the doubt.'" Cullen v. Pinholster, 563 U.S. 170, 181 (2011) (internal citations omitted). The prisoner bears the burden to show that the state court's decision "was so lacking in

justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Harrington v. Richter, 562 U.S. 86, 103 (2011). In other words, a state-court "determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness" of that ruling. Id. at 101 (quoting Yarborough v. Alvarado, 541 U.S. 652, 664 (2004)). Federal habeas corpus review therefore serves as a "'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." Id. at 102-03 (citation omitted).

Here, Petitioner raised the claims presented in the Petition on direct appeal and those claims were rejected by the California Court of Appeal in a reasoned decision. See LD 8. The California Supreme Court then summarily denied Petitioner's petition for review. See LD 10. For purposes of applying the AEDPA standard of review, the California Court of Appeal decision on direct appeal constitutes the relevant state court adjudication on the merits. See Johnson v. Williams, 568 U.S. 289, 297 n.1 (2013) (noting that federal habeas court "look[s] through" summary denial of claim to last reasoned decision from the state courts to address the claim).

III.

DISCUSSION

A. Exclusion of Evidence Claim

Petitioner contends that the trial court violated his right to cross-examine a witness and present a defense when it precluded toxicology evidence that Nande had drugs and alcohol in his system. See Petition at 5.

As the state appellate court noted, the trial court excluded evidence that Nande had cocaine, methamphetamine, and alcohol in his system when he was killed because it concluded that such evidence was irrelevant. See LD 6 at 6. The trial court noted that Petitioner was not in any way claiming self

defense but rather was claiming that the rifle discharged accidentally. See id. The state appellate court agreed with the trial court's analysis and found that the exclusion of evidence of Nande's drug and alcohol use was neither an abuse of discretion nor a violation of Petitioner's fair trial and due process rights. See id. at 6-7.

1. Applicable Law

"[T]he Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Holmes v. South Carolina, 547 U.S. 319, 324 (2006) (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986)); see also Chambers v. Mississippi, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations."). However, this right is not unlimited. Generally, states "have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." Holmes, 547 U.S. at 324 (quoting United States v. Scheffer, 523 U.S. 303, 308 (1998)). A defendant's right to introduce relevant evidence is subject to reasonable restrictions, such as evidentiary and procedural rules. See Scheffer, 523 U.S. at 308. "Thus, a trial judge may exclude or limit evidence to prevent excessive consumption of time, undue prejudice, confusion of the issues, or misleading the jury." Menendez v. Terhune, 422 F.3d 1012, 1033 (9th Cir. 2005). "The trial judge enjoys broad latitude in this regard, so long as the rulings are not arbitrary or disproportionate." Id.; see also Montana v. Egelhoff, 518 U.S. 37, 42 (1996) (noting that accused does not have an absolute right to present evidence that is incompetent, privileged, or otherwise inadmissible under evidentiary rules).

The question is whether the state court applied evidentiary rules that "serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote," Holmes, 547 U.S. at 326, or whether the exclusion of

evidence "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," Egelhoff, 518 U.S. at 43 (quoting Patterson v. New York, 432 U.S. 197, 201-02 (1977)). Federal habeas relief is warranted only if the exclusion of evidence significantly undermined a fundamental element of the defense. See Moses v. Payne, 555 F.3d 742, 757 (9th Cir. 2008).

The Confrontation Clause of the Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. This "bedrock procedural guarantee" is applicable in both federal and state prosecutions. Crawford v. Washington, 541 U.S. 36, 42 (2004). "[T]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination" in order to ensure the reliability of the evidence. Davis v. Alaska, 415 U.S. 308, 315-16 (1974) (quoting 5 J. Wigmore, Evidence § 1395, p. 123 (3d ed. 1940)). Although the Confrontation Clause guarantees an opportunity for effective cross-examination, it does not guarantee "cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Delaware v. Fensterer, 474 U.S. 15, 20 (1985). Trial courts retain wide latitude to impose reasonable limits on cross-examination and it is Petitioner's burden to establish a Confrontation Clause violation by showing that a "reasonable jury might have received a significantly different impression of [a witness's] credibility had . . . counsel been permitted to pursue his proposed line of cross-examination." Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986).

2. Analysis

Petitioner's claim that the trial court's evidentiary ruling violated his right to present a defense is without merit. The trial court ruled that Nande's toxicology report was irrelevant pursuant to a valid rule of evidence. See 3 RT

117-18, 5 RT 26; see also Sambrano v. Biter, No. 15-448, 2017 WL 7371170, at *4-5 (C.D. Cal. Aug. 10, 2017) (denying habeas relief where trial court excluded evidence as irrelevant under California Evidence Code § 210). As the state appellate court explained, evidence that the victim had drugs and alcohol in his system would not have made the jury more likely to conclude that Petitioner accidentally fired his weapon. Such information would have been relevant if Petitioner had claimed any form of self-defense based on his fear of the victim's drug-induced erratic behavior. Instead, Petitioner testified that he had absolutely no intention of shooting the victim or his niece. Including a toxicology report confirming Nande's drug use would only prejudice the jury by making Nande seem like a less sympathetic victim. The trial court's means of excluding a toxicology report while still allowing Petitioner to discuss his fear and knowledge of Nande's past drug use were not disproportionate to the legitimate ends of avoiding prejudice.

Petitioner's claim that including Nande's toxicology report would discredit Maldonado's testimony is similarly meritless. Petitioner fails to show how someone else's drug use would validly discredit the witness's testimony in a relevant way. The jury already heard that Maldonado had used cocaine on the night of the shooting. See 3 RT 20, 117. Information about Nande's similar drug use would not have made a jury more likely to disbelieve Maldonado. As the Supreme Court "has not yet made a clear ruling that admission of irrelevant or overtly prejudicial evidence constitutes a due process violation sufficient to warrant issuance of the writ," the evidentiary ruling was not contrary to, or an unreasonable application of, clearly established federal law. Holley v. Yarborough, 568 F.3d 1091, 1101 (9th Cir. 2009).

Nor was Petitioner's right to confrontation violated by the trial court's exclusion of the victim's drug and alcohol use. "[T]he Confrontation Clause does not require 'cross-examination on topics of very slight or marginal

relevance . . . .'" Williams v. McDonald, No. 11-2236, 2012 WL 3047167, at *12 (C.D. Cal. May 30, 2012) (quoting Chipman v. Mercer, 628 F.2d 528, 531 (9th Cir. 1980), overruled on other grounds by Delaware v. Van Arsdall, 475 U.S. 673 (1986)). Petitioner cannot successfully claim that his right to cross-examine Maldonado was infringed upon by the evidentiary ruling because the jury may have been more biased in Petitioner's favor if it realized that both Maldonado and Nande were drug users. Moreover, Petitioner has not shown that the exclusion of the toxicology report prejudiced him or denied the jury sufficient information to assess Maldonado's credibility. Even if the "jury was left with the false impression that Nande was completely innocent, with [Petitioner] was creditably drunk," see Petition at 17, Nande's drug use was irrelevant to Petitioner's claim that the shooting was a complete accident. Moreover, Petitioner's intoxication was also his primary explanation for how he accidentally shot his niece and her boyfriend. He cannot now claim that the jury knowing that he was intoxicated inhibited his right to confront a witness under the Confrontation Clause.

Finally, even if the trial court erred in excluding the evidence at issue, any alleged error did not have a "substantial and injurious effect or influence in determining the jury's verdict." Brecht v. Abrahamson, 507 U.S. 619, 637-38 (1993); accord Fry v. Pliler, 551 U.S. 112, 116-17 (2007). Such a showing is not made where the evidence of guilt is, "if not overwhelming, certainly weighty," and "other circumstantial evidence . . . also point[s] to Petitioner's guilt." Brecht, 507 U.S. at 639. Here, the jury heard overwhelming evidence of Petitioner's guilt. Maldonado testified that Petitioner said, "Call the cops on me, mother fucker, I'll shoot you right here" right before shooting her and Nande. 4 RT 43. Petitioner admitted that after he fired a first shot in the air, he pushed the rifle's lever back to its loaded position, even though he claimed that pushing the trigger was an accident. See 4 RT 153-54. He further admitted that

he fled the scene after the shooting without checking to see if anyone was hurt, detracting from his explanation that the shooting was an accident. See 4 RT 134-35. Because overwhelming evidence supported the jury's verdict, no actual prejudice occurred. Habeas relief is not warranted on this ground.

B. Instructional Error

Petitioner argues that the trial court violated his due process rights by instructing the jury that it "should"—rather than "must"—consider evidence of voluntary intoxication in determining specific intent. Petition at 5.

1. Background

The California Court of Appeal summarized the relevant facts and rejected Petitioner's claims as follows:

> The jury was instructed pursuant to CALJIC No. 4.21.1: "[I]n the crimes charged in counts 1 and 2 a necessary element is the existence in the mind of the defendant of certain specific intents or mental states which is included in the definition of the crimes set forth elsewhere in these instructions. [¶] If the evidence shows that a defendant was intoxicated at the time of the alleged crime, you should consider that fact in deciding whether or not the defendant had the required specific intent or mental state. [¶] If from all of the evidence you have a reasonable doubt whether a defendant had the required specific intent or mental state, you must find the defendant did not have that specific intent or mental state."
>
> Defendant asserts instructional error insofar as CALJIC No. 4.21.1 advised the jury it "should" rather than "must" consider defendant's intoxication in relation to the requisite mental state for murder or attempted murder. Our Supreme Court has held to the contrary. In People v. Hajek (2014) 58 Cal.4th 1144, 1224–1225, our Supreme Court held: "Hajek contends that the use of 'should'

. . . in [CALJIC No. 4.21.1] permitted the jury to disregard entirely his mental impairment defense. Not so. [¶] CALJIC No. 4.21.1, as given here, provided: 'If the evidence shows that a defendant was mentally ill, suffered from a mental disease or defect at the time of the alleged crime, you should consider that fact in determining whether or not such defendant had such mental state, in other words, whether he did in fact premeditate and deliberate.' The next paragraph, however, instructed the jury that '[i]f from all the evidence you have a reasonable doubt, you must find that defendant did not have such mental state.' [¶] The principle that jury instructions are read as a whole and in relation to one another applies equally to the different parts of a single instruction. When so construed, [CALJIC No. 4.21.1] was clear in requiring the jury to consider Hajek's mental impairment evidence in assessing whether he possessed the requisite mental state. This is because the jury could obviously not reach the issue of whether such evidence created a reasonable doubt without first considering it. We presume the jurors were capable of reading, understanding, and applying the instruction in this commonsense manner rather than in Hajek's hypertechnical manner." The same is true with respect to the jury instruction as to defendant's intoxication in the present case.

LD 6 at 7-8 (citations omitted) (emphasis and alternations in original).

2. Analysis

The issue of whether a jury instruction violates state law generally is not a federal question or a proper subject for habeas corpus relief. See Estelle v. McGuire, 502 U.S. 62, 71-72 (1991). To show a violation of due process, the petitioner must show that the ailing instruction by itself so infected the entire trial that the resulting conviction was fundamentally unfair. See id. at 72. The

challenged jury instructions "must be considered in the context of the instructions as a whole and the trial record." Id.

A jury instruction violates due process if it fails to give effect to the requirement that the prosecution must prove every element of the offense. Middleton v. McNeil, 541 U.S. 433, 437 (2004). "Nonetheless, not every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation." Id. "The burden of demonstrating that an erroneous instruction was so prejudicial that it will support a collateral attack on the constitutional validity of a state court's judgment is even greater than the showing required to establish plain error on direct appeal." Henderson v. Kibbe, 431 U.S. 145, 154 (1977). Even if it is determined that the instruction violated the petitioner's right to due process, the petitioner can only obtain relief if the unconstitutional instruction had a "substantial and injurious effect or influence" on the jury's verdict and thereby resulted in actual prejudice. Brecht, 507 U.S. at 637.

The state appellate court reasonably determined that the trial court did not err when it instructed the jury that it "should" rather than "must" consider Petitioner's voluntary intoxication with regards to Petitioner's required mental state. The jury could reasonably infer that the instruction that it "should" consider intoxication was equivalent to stating that it "must" do so. As the California Court of Appeal noted, Petitioner's reading of the instruction is "hypertechnical." LD 6 at 8. The less authoritative tone of using "should" rather than "must" in CALJIC No. 4.21.1 does not imply that a juror may arbitrarily disregard intoxication evidence that he or she does not want to include. This standard version of the jury instruction did not lead to the reasonable likelihood of impermissible burden-lowering.

Further, the instruction cautions that if a juror has reasonable doubt whether Petitioner had the required specific intent, he or she must find that

Petitioner did not have that specific intent. See LD 6 at 7-8. The jury was also properly instructed regarding credibility, see 4 RT 192-93, proof of all elements, see id. at 197, the presumption of innocence, see id. at 198, and the difference between general criminal intent and specific intent, see id. at 199-200. Even if the trial court erred in giving CALJIC No. 4.21.1, the ailing instruction did not so infect the trial such that the resulting conviction was fundamentally unfair—especially when considered within the context of the instructions as a whole and the trial record. See Estelle, 502 U.S. at 72. Finally, as discussed in Section III.A.2, any error did not have a substantial and injurious effect or influence on the jury's verdict such that habeas relief is unwarranted. See Brecht, 507 U.S. at 637.

IV.

CONCLUSION

It therefore is recommended that the District Court issue an Order: (1) accepting this Report and Recommendation; and (2) directing that Judgment be entered denying the Petition and dismissing this action with prejudice.

Dated: May 8, 2018

DOUGLAS F. McCORMICK
United States Magistrate Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MIGUEL ANGEL BARRON,

Petitioner,

v.

RAYMOND MADDEN, Warden,

Respondent.

No. CV 16-08912-CJC (DFM)

Order Accepting Report and Recommendation of United States Magistrate Judge

Under 28 U.S.C. § 636, the Court has reviewed the Petition, the other records on file herein, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court has engaged in a de novo review of those portions of the Report and Recommendation to which objections have been made. The Court accepts the report, findings, and recommendations of the Magistrate Judge.

IT IS THEREFORE ORDERED that Judgment be entered denying the Petition.

Dated: July 23, 2018

CORMAC J. CARNEY
United States District Judge

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MIGUEL ANGEL BARRON,
Petitioner,
v.
RAYMOND MADDEN, Warden,
Respondent.

Case No. CV 16-08912-CJC (DFM)

JUDGMENT

Pursuant to the Order Accepting Findings and Recommendations of the United States Magistrate Judge,

IT IS ADJUDGED that the Petition is denied, and this action is dismissed with prejudice.

Dated: July 23, 2018

CORMAC J. CARNEY
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MIGUEL ANGEL BARRON,

Petitioner,

v.

RAYMOND MADDEN, Warden,

Respondent.

No. CV 16-08912-CJC (DFM)

Order Denying Certificate of Appealability

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts provides as follows:

> (a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of

appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that this standard means a showing 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, 483-84 (2000) (citation omitted).

Here, the Court finds and concludes that Petitioner has not made the requisite showing with respect to the claims alleged in the Petition.

Accordingly, a Certificate of Appealability is denied.

Dated: July 23, 2018

CORMAC J. CARNEY
United States District Judge

Presented by:

DOUGLAS F. McCORMICK
United States Magistrate Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV16-08912 CJC (DFM)**	Date	January 31, 2017
Title	Miguel Angel Barron v. Raymond Madden		

Present: The Honorable	Douglas F. McCormick	
N. Boehme	n/a	n/a
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

Proceedings: (In Chambers) Order Granting Petitioner's Declaration in Support of Request to Proceed

The Court is in receipt of Petitioner's Declaration in Support of Request to Proceed *In Forma Pauperis* filed January 12, 2017. Petitioner's Request is GRANTED.

Petitioner should be aware that the granting of *in forma pauperis* status does not entitle the Petitioner to have the Court or Clerk's Office provide copies or to mail conformed copies to the Petitioner without payment of appropriate costs. Petitioner must comply with all Local Rules, specifically those set forth below.

L.R. 11-4.5 Request for Conformed Copy . If the party presenting a document for filing requests the Clerk to return a conformed copy by United States mail, an extra copy shall be submitted by the party for that purpose accompanied by a postage-paid, self-addressed envelope.

L.R. 11-4.1 Copies In General . All documents filed with the Clerk in paper format, including exhibits to documents, shall be filed with one clear, conformed and legible mandatory chambers copy, clearly labeled as such, for the use of the judge.

_____ : _____

Initials of Clerk nb

Additional material from this filing is available in the Clerk's Office.