No. __________

IN THE

Supreme Court of the United States

GRAY MARIA,

Petitioner,

v.

WILLIAM MUNIZ, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

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FILED

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GRAY MARIA, Petitioner-Appellant, v. WILLIAM MUNIZ, Warden, Respondent-Appellee.	No. 15-56272 D.C. No. 2:13-cv-01183-DSF-MRW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted June 7, 2017
Pasadena, California

Before: GRABER and MURGUIA, Circuit Judges, and BOLTON,** District Judge.

Petitioner Gray Maria was convicted of first-degree murder and assault after he killed his quadriplegic cousin and stabbed a stranger at a restaurant. It is

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

undisputed that he suffers from a serious mental illness and that, at the time of the murder, Petitioner experienced hallucinations in which angels persuaded him to kill his cousin.

Petitioner pleaded not guilty by reason of insanity, and the court bifurcated his trial into a guilt phase and a sanity phase. *See* Cal. Penal Code § 1026(a) (providing for that procedure). During the guilt phase, defense counsel did not introduce evidence of Petitioner's mental illness. The jury found Petitioner guilty of the charged crimes.

During the sanity phase, both sides presented expert testimony about Petitioner's sanity at the time he committed the crimes. The experts agreed that Petitioner was aware of the nature and quality of his actions, but they disagreed about whether he knew that his actions were wrong. The jury returned a verdict finding that Petitioner was sane at the time of the crimes.

Petitioner appealed the sanity verdict unsuccessfully. He then filed a state habeas petition, alleging ineffective assistance of counsel at various stages of the proceedings. The Los Angeles County Superior Court denied the habeas petition. The California Court of Appeal and the California Supreme Court each summarily denied the habeas petition.

Petitioner then brought the present federal habeas petition under 28 U.S.C. § 2254, which the district court denied. Petitioner timely appeals, and we affirm.

Under the Antiterrorism and Effective Death Penalty Act of 1996, we may grant relief only if a state court's adjudication of a claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court," or "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).

1. On the ineffective assistance of counsel claim, we assume, without deciding, that counsel's representation "fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). But we hold that the state court's conclusion that Petitioner did not suffer prejudice, as also required by *Strickland*, id. at 691–96, is not unreasonable.

a. Despite the alleged errors by pretrial counsel, Petitioner had a competency hearing, and his new counsel reinstated the insanity plea.

b. In California, a defendant may negate the element of premeditation and deliberation by demonstrating that command hallucinations caused him to be unable to plan or to weigh considerations for and against a course of action. *People v. Stress*, 252 Cal. Rptr. 913, 915 (Ct. App. 1988). But deliberation exists even if the considerations that the defendant weighs are irrational or insane. *See People v. Bobo*, 3 Cal. Rptr. 2d 747, 756–57 (Ct. App. 1990) ("a delusional, psychotic system can be compatible with the premeditation and deliberation required for a first degree murder"). Here, the evidence showed both planning (for example, selecting and concealing a knife) and deliberation (for example, Petitioner initially resisted the angels' voices and considered whether, in his view, his cousin wanted to die). The omitted evidence would not have shown that Petitioner did not plan or did not deliberate at the time he killed his cousin. Therefore, the state court's conclusion that Petitioner suffered no prejudice was not unreasonable.

A defendant in California also may negate the element of specific intent through evidence of mental illness. *People v. McGehee,* 201 Cal. Rptr. 3d 714, 728 (Ct. App. 2016). But both the defense and prosecution experts testified that Petitioner knew what he was doing when he killed his cousin.

c. During the sanity phase, the order in which the experts testified did not prejudice Petitioner because counsel effectively explained the discrepancies between the two experts and urged the jury to reach a verdict of insanity. Second, Petitioner has not shown that a different opening statement would have swayed the verdict. Finally, counsel's failure to obtain records from two prior psychiatric hospitalizations did not result in prejudice because Petitioner has not explained what additional information, if any, those records would have revealed.

2. Given the weak showings of prejudice at the pretrial and sanity phases, the state court was not unreasonable to reject Petitioner's cumulative error arguments.

3. Finally, Maria challenges the sufficiency of the evidence supporting the jury's sanity verdict. We assume, without deciding, that this claim is cognizable on habeas review. *But see Hawkins v. Horal*, 572 F. App'x 480, 480–81 (9th Cir. 2014) (unpublished decision) (noting that the Supreme Court has not "addressed challenges to the sufficiency of the evidence regarding sanity when a defendant bears the burden of proving insanity as an affirmative defense" and sanity "is not an element of the crime").

"[Sufficiency-of-the-evidence] claims face a high bar in federal habeas proceedings because they are subject to two layers of judicial deference." *Coleman v. Johnson*, 132 S. Ct. 2060, 2062 (2012) (per curiam). On habeas review, we may overturn a state court decision rejecting a sufficiency of the evidence challenge "only if the state court decision was 'objectively unreasonable.'" *Cavazos v. Smith*, 565 U.S. 1, 2, (2011) (per curiam) (quoting *Renico v. Lett*, 559 U.S. 766, 773 (2010)).

The sanity phase came down to a credibility battle between dueling experts. The experts relied on identical information but construed Petitioner's conduct during the crimes and his statement to police in different ways. A reasonable jury could find—based on the transcript from the police interrogation, Petitioner's evasive conduct during and after the crimes, and the prosecution expert's professional opinion—that Petitioner knew that his actions were wrong and that he was, therefore, legally sane when he committed the crimes. In sum, the California Court of Appeal's decision affirming the sanity verdict was not objectively unreasonable.

AFFIRMED.

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Maria v. Muniz, No. 15-56272

Murguia, Circuit Judge, dissenting in part:

I disagree with the majority's conclusion as to Maria's claim alleging ineffective assistance of counsel in the guilt phase.

During the guilt phase of a bifurcated, first-degree murder trial, a defendant can introduce expert testimony opining that the defendant's mental "illness caused him to obey a command hallucination to" commit the murder, and therefore the defendant "was incapable of harboring the necessary premeditation [and] deliberation." *People v. Duckett*, 209 Cal. Rptr. 96, 100–01 (Ct. App. 1984).

In the present case, both experts acknowledged that Maria experienced command hallucinations as he was committing the murder. Despite this undisputed evidence, Maria's counsel failed to present any expert testimony explaining how command hallucinations can preclude premeditation and deliberation. In my view, "counsel's performance was deficient," and Maria "was prejudiced by the deficiency." *Wood v. Ryan*, 693 F.3d 1104, 1118 (9th Cir. 2012). Moreover, I believe the state court was unreasonable to conclude otherwise.

1. Counsel's failure to present expert testimony in the guilt phase was deficient. "A defendant who elects to plead both not guilty and not guilty by reason of insanity may have the opportunity to employ mental state evidence *in two* *different ways.*" *People v. Mills*, 286 P.3d 754, 759 (Cal. 2012) (emphasis added). In the guilt phase, a defendant can introduce evidence of mental illness to negate premeditation and deliberation. Cal. Penal Code § 28(a). In the sanity phase, a defendant can use evidence of mental illness to prove that he was insane at the time he committed the crime. Cal. Penal Code § 25(b). In light of these differing purposes, it is not entirely clear what strategic value counsel could have gained by saving the evidence of mental illness exclusively for the sanity phase. Quite to the contrary, counsel squandered an opportunity to negate premeditation and deliberation, without any apparent offsetting benefits.

2. Maria suffered prejudice because there is a "reasonable probability that at least one juror would have struck a different balance" if the jury had heard expert testimony about how command hallucinations diminished Maria's ability to premeditate and deliberate. *Wiggins v. Smith*, 539 U.S. 510, 513 (2003). "A reasonable probability is one sufficient to undermine confidence in the outcome, but is less than the preponderance more-likely-than-not standard." *Lambright v. Schriro*, 490 F.3d 1103, 1121 (9th Cir. 2007) (internal quotation marks omitted).

California courts consider the following factors in analyzing deliberation and premeditation: planning, motive, and manner of killing. *People v. Anderson*, 447 P.2d 942, 949 (Cal. 1968). There was no evidence here that Maria had any plans to kill his cousin before he entered her house that day; in fact, he did not even come to the house with a weapon. Additionally, there was no evidence that Maria harbored a motive for killing his cousin. Instead, after watching television with his cousins for "a few minutes," Maria experienced command hallucinations urging him to take his cousin's life, so he entered the kitchen and secured a knife. Maria then rejoined his cousins and "[a]fter a minute," when one of his cousins left the room, Maria took his quadriplegic cousin's life.

The jury's finding of premeditation and deliberation here hangs on a thin reed, essentially consisting of Maria's decision to conceal a knife and Maria's struggle to resist the voices in his head for several minutes. *See Strickland*, 466 U.S. at 696 ("[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support."). Expert testimony would have shed some light on what was happening in Maria's mind during those taut minutes by explaining to the jury how command hallucinations impact thought processes and perceptions of reality, resulting in disorganized thoughts and impulsivity. If counsel had offered such expert testimony during the guilt phase, there is "a reasonable probability that at least one juror would have harbored doubt about" premeditation and deliberation. *Duncan v. Ornoski*, 528 F.3d 1222, 1245 (9th Cir. 2008).

The weak evidence of premeditation and deliberation by itself is sufficient to demonstrate prejudice, but "there is an additional indicator of prejudice here because the jury had a difficult time reaching a verdict." *Vega v. Ryan*, 757 F.3d 960, 974 (9th Cir. 2014); *Wharton v. Chappell*, 765 F.3d 953, 978 (9th Cir. 2014) (analyzing the prejudice prong and noting that "the jury did not reach its verdict easily, possibly out of recognition that, although his crimes were heinous, Petitioner himself clearly suffers from serious mental illness and came from a disadvantaged and abusive home"). The guilt phase deliberations lasted more than one day, even though the jury heard Maria's confession, listened to eyewitness testimony, and did not have any evidence to negate the mens rea required for first-degree murder. The sanity phase deliberations lasted three days, and the jury submitted a note to the court asking for a definition of "preponderance of the evidence," the standard by which Maria had to prove insanity. These protracted deliberations show that the jurors were possibly troubled by Maria's mental illness.

Considering this record as a whole—the jury's difficulty in reaching a verdict, the undisputed evidence of Maria's command hallucinations, and the scant evidence of premeditation and deliberation—the state court was unreasonable to conclude that Maria was not prejudiced by counsel's deficient performance. I, therefore, respectfully dissent from the majority's decision denying habeas relief.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GRAY MARIA, Petitioner, v. RANDY GROUNDS, Warden, Respondent.	Case No. CV 13-1183 DSF (MRW) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

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

I. <u>SUMMARY OF RECOMMENDATION</u>

This is a state habeas action. Petitioner killed his disabled cousin and stabbed another person. Petitioner suffered from significant mental illnesses that initially rendered him unable to stand trial. However, after he was restored to competency, the jury found Petitioner guilty for the criminal conduct and rejected his insanity defense.

On habeas review, Petitioner brings numerous challenges to his convictions based on his mental health issues and the alleged ineffectiveness of his lawyers in pretrial proceedings and during the trial. However, the state court decisions rejecting his claims were not contrary to, nor unreasonable applications of, clearly established federal law. Accordingly, the Court recommends that the habeas relief be denied.

II. FACTS AND PROCEDURAL HISTORY

A. The Criminal Conduct

Petitioner stabbed a stranger in a parking lot at a fast food restaurant in June 2006. Later that morning, he entered his relatives' house. Petitioner killed his cousin (a paraplegic who suffered from cerebral palsy) by stabbing her 23 times in the throat. (Lodgment # 6 at 2-3.)

At trial, the prosecution presented considerable evidence showing that Petitioner committed these acts with culpable intent and a recognition of the wrongfulness of his actions. This included proof that Petitioner: (a) fled from a security guard at the restaurant after the first stabbing; (b) waited for a relative to leave the room before he killed the second victim; (c) disposed of the weapons and bloody clothing involved in the crimes; (d) rented a hotel room after the killing to hide from the police; and (e) gave a Mirandized confession to the police after his arrest.

B. Pretrial and Trial Proceedings

Petitioner had a lengthy history of mental illness and hospitalizations. After the preliminary hearing in the case, the trial court found Petitioner incompetent to stand trial. Petitioner spent several months in a state hospital during 2008. The trial court subsequently concluded that Petitioner had been restored to competency and could stand trial. (Docket # 43 at 2.) After that determination, the State Bar of California disbarred the two lawyers (a father and son team) who represented Petitioner at the preliminary hearing and other pretrial proceedings. (Id. at 10.)

A different lawyer represented Petitioner at trial in 2010. The jury convicted Petitioner of murder and assault with a deadly weapon. In the "sanity" phase of the trial, the jury returned a finding that Petitioner was sane at the time of the crimes. (Lodgment # 6 at 2.) The trial court sentenced Petitioner to a term of 26 years to life in prison.

C. Appellate and Habeas Proceedings

The state appellate court affirmed Petitioner's conviction on direct appeal in a reasoned, unpublished decision. The only issue raised on appeal was whether sufficient evidence supported the jury's verdict regarding Petitioner's sanity. (Id. at 15.) The state supreme court denied review without comment. (Lodgment # 8.)

This federal habeas action followed. After reviewing the petition and a supplemental submission from Petitioner, the Court appointed the Federal Public Defender to represent Petitioner. The Court also entered a stay to allow Petitioner to present and exhaust additional claims in state court. (Docket # 8, 36.)

The state superior court denied habeas relief in a brief, reasoned order. (Lodgment # 10.) The court reached the merits of Petitioner's ineffective assistance of counsel claims asserted on habeas review. However, the superior court determined that Petitioner was procedurally barred from habeas relief on additional claims (involving alleged misconduct by the prosecutor and the trial judge) that he could have raised on direct appeal. (Id. at 1.) The state appellate and supreme courts denied relief without comment. Petitioner then filed a

Second Amended Petition in which he asserted his newly-exhausted claims and withdrew other arguments. (Docket # 43.)

III. DISCUSSION

A. 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 was that 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).

In a habeas action, this Court generally reviews the reasonableness of the state court's last reasoned decision on a prisoner's claims. Murray v. Schriro, 746 F.3d 418, 441 (9th Cir. 2014). Here, the decisions of the state appellate court on direct appeal (Lodgment # 6) and the superior court on habeas review (Lodgment # 10) stand as the last reasoned decisions on Petitioner's claims. Those decisions will be reviewed for reasonableness. Ylst v. Nunnemaker, 501 U.S. 797, 803-04 (1991); Harrington v. Richter, 562 U.S. 86, 131 S. Ct. 770, 784 (2011).

Overall, AEDPA presents "a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court. Burt v. Titlow, ___ U.S. ___, 134 S. Ct. 10, 16 (2013). The federal statute 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, ___ U.S.___, 131 S. Ct. 1388, 1398 (2011) (quotations omitted). On habeas review, AEDPA places on a prisoner 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." Richter, 131 S. Ct. at 786-87.

Put another way, 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 786. 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.

B. Sufficiency of Evidence (Ground 9)[1]

Petitioner contends that the evidence presented during the sanity phase of his trial was insufficient to establish that he was legally sane at the time of the crimes. (Docket # 43 at 32.)

1. Facts

After the jury convicted Petitioner of murder and assault, the trial court conducted a second phase of the trial to determine whether Petitioner was legally sane at the time of the crimes. The prosecution and the defense each presented expert testimony to the jury from experienced forensic psychiatrists. Both experts concluded that Petitioner suffered from schizophrenia and exhibited delusional behavior.

The defense expert determined that Petitioner did not understand that his conduct was morally wrong at the time of the offenses, and was insane when he killed his cousin. (Lodgment # 2, 4RT at 1811.) However, the prosecution's

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[1] In his Second Amended Petition, Petitioner voluntarily withdrew several previously-asserted claims. For the reader's convenience, the Court takes up the remaining claims in an order different than how they were presented in the pleading.

expert opined that Petitioner's objective behavior at and shortly after the killing (hiding evidence, fleeing the scene, making plans to evade the police) and his overall ability to function in society demonstrated that Petitioner was not legally insane. (Id. at 1905.) The jury returned a finding that Petitioner was not insane.

On direct appeal, the appellate court affirmed the jury's verdict. The appellate court expressly concluded that, after reviewing the conflicting testimony from the experts and evidence of Petitioner's conduct that the parties presented during the guilt phase, the jury could reasonably have found Petitioner not to be insane when he committed the crimes. (Lodgment # 6 at 16-17.)

2. Relevant Federal Law

Under the Due Process Clause, a criminal defendant may be convicted only by proof of every fact necessary to constitute a charged crime or enhancement. Jackson v. Virginia, 443 U.S. 307 (1979). The relevant issue under Jackson "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 319 (emphasis in original). On habeas review, a federal court's consideration is limited to the determination of whether the state court analysis – which itself is deferential to a jury's verdict – was "objectively reasonable." Cavazos v. Smith, ___ U.S. ___, 132 S. Ct. 2, 4 (2011) (quotation omitted). As a result, Jackson claims "face a high bar in federal habeas proceedings because they are subject to two layers of judicial deference." Coleman v. Johnson, ___ U.S. ___, 132 S. Ct. 2060, 2062 (2012) (per curiam).

In applying the Jackson standard, the federal court must refer to the substantive elements of the criminal offense as defined by state law. Jackson, 443 U.S. at 324 n.16. A federal court sitting in habeas review generally is "bound to accept a state court's interpretation of state law." Butler v. Curry, 528

F.3d 624, 642 (9th Cir. 2008). Under California law, a criminal defendant is legally insane if he is "incapable either of knowing the nature and character of his act, or of understanding that it is wrong." People v. Skinner, 39 Cal. 3d 765, 782 (1985). The defendant bears the burden of establishing insanity as an affirmative defense. People v. Hernandez, 22 Cal. 4th 512, 521-22 (2000).

Numerous judges in this district have concluded that there is no clearly established decision from the Supreme Court extending the Jackson / sufficiency-of-evidence analysis under the Due Process Clause to an insanity defense claim. As a result, AEDPA precludes consideration of such a claim on habeas review. Pop v. Yarborough, 354 F. Supp. 2d 1132, 1138 (C.D. Cal. 2005) ("it does not appear that Petitioner's claim relating to his insanity defense is even cognizable under habeas because sanity was not an element of the offenses for which he was convicted."); Gonzalez v. Harrington, No. CV 08-7073 GW (SS), 2011 WL 7429400 at *6 (C.D. Cal. 2011) ("The Supreme Court has not addressed challenges to the sufficiency of the evidence where, as here, a criminal defendant bears the burden of proving the affirmative defense of insanity by a preponderance of the evidence."); Moncada v. Smalls, No. CV 09-5745 AG (FFM), 2012 WL 3150596 at *5 (C.D. Cal. 2012) ("where the defendant bears the burden of proving insanity as a defense, constitutional challenges arising from a bifurcated trial regarding the defendant's sanity are not cognizable on federal habeas review"). Instead, a claim regarding the adequacy of the proof of an insanity defense "is really a challenge based on state law" procedures that does not raise a federal constitutional question. Pop, 354 F. Supp. 2d at 1138.

3. Analysis

Petitioner is not entitled to habeas relief on this claim. As a threshhold matter, the Jackson analysis does not appear to apply to Petitioner's assertion of the affirmative defense of legal insanity. Petitioner points to no clearly established federal law as determined by the Supreme Court that extends Jackson to the procedural context of a sanity phase in which the defense bears the burden of proof. Pop, 354 F. Supp. 2d at 1138; Gonzalez, 2011 WL 7429400 at *6. In the absence of such a "specific legal rule" from the Supreme Court, the Court cannot grant relief under AEDPA. Lopez v. Smith, ___ U.S. ___, 135 S. Ct. 1, 3 (2014) (AEDPA bars consideration of claim when "our case law does not clearly establish the legal proposition needed to grant respondent habeas relief").

Even if the Court could consider Petitioner's Jackson claim, the state appellate court's decision survives doubly-deferential habeas review under AEDPA. The appellate court evaluated the evidence presented during the second phase of the trial to determine whether the evidence of Petitioner's insanity was "of such weight and character that a jury could not reasonably reject it."[2] (Lodgment # 6 at 16.) The appellate court then evaluated the opinions of the two experts and the other evidence of Petitioner's conduct presented at trial in considerable detail. The court concluded that the evidence of Petitioner's mental state was so disputed that the jury was entitled to come down on the side of sanity. (Id. at 16-17.)

That analysis was not unreasonable. The state court used a standard roughly analogous to the Jackson test to evaluate the sufficiency of the evidence presented at trial. The appellate court noted several perceived disputes regarding the prosecution's mental health expert (the psychiatrist admitted that he had not reviewed all of Petitioner's hospital records, and candidly acknowledged that he did not have the highest degree of certainty in his opinion). Even so, the

[2] The appellate court expressly applied a "substantial evidence" test to review the sanity determination under state law. (Lodgment # 6 at 16.) Neither party contends that this test materially differed from the Jackson standard.

appellate court concluded that the evidence was more than colorable to prove or disprove Petitioner's sanity, and that it was "for the jury, not this court, to decide." (Id. at 17.) Given the conflicting evidence, fairminded judges would not uniformly conclude that the state court acted in violation of the Constitution here. Richter, 131 S. Ct. at 786. Habeas relief is not warranted.

C. Ineffective Assistance of Counsel (Grounds 1, 2, 5)

Petitioner contends that the lawyers who represented him before trial "abandoned" him and provided ineffective assistance of counsel (IAC). He also brings IAC claims against the lawyer who represented him during the guilt and sanity phases of the trial.

1. Facts

During pretrial proceedings, Petitioner was represented by two lawyers (a father and son) whom the State Bar of California suspended from practice. The father represented Petitioner during the preliminary hearing and competency phases of the case before trial. The son briefly appeared for Petitioner in other pretrial hearings. Petitioner broadly contends that the lawyers failed to properly develop evidence, cross-examine the surviving victim at the preliminary hearing, and investigate his mental health defenses during pretrial proceedings. (Docket # 43 at 19-24.)

Petitioner retained a private lawyer to represent him at trial. (Lodgment # 2, 2RT at G-1.) Petitioner argues that the lawyer was deficient by failing to present evidence of Petitioner's mental illness during the guilt phase of the trial to refute the intent-to-kill element of the murder charge. Petitioner also contends that the lawyer should have looked into Petitioner's claim that another individual (Petitioner's cousin) killed the victim, and generally been more assertive in his representation. (Docket # 43 at 25-29.) Petitioner offered no declaration from any of the lawyers regarding their representation of him.[3]

The superior court rejected all of the IAC claims on habeas review. In a brief, reasoned decision, the superior court expressly found that Petitioner "failed to demonstrate that there is a reasonable probability that effective counsel would have achieved a more favorable outcome." (Lodgment # 10 at 1.)

2. Relevant Federal Law

To establish an ineffective assistance of counsel claim under Strickland v. Washington, 466 U.S. 668 (1984), "a defendant must show both deficient performance by counsel and prejudice." Knowles v. Mirzayance, 556 U.S. 111, 112 (2009). A criminal defendant "bears the burden of overcoming the strong presumption" that a lawyer provided adequate representation. Cheney v. Washington, 614 F.3d 987, 994 (9th Cir. 2010). "Failure to satisfy either prong of the Strickland test obviates the need to consider the other." Rios v. Rocha, 299 F.3d 796, 805 (9th Cir. 2002).

Deficient performance is defined as representation that falls below an objective standard of reasonableness. Strickland, 466 U.S. at 688. However, a trial lawyer is "strongly presumed to have rendered adequate assistance" and should not have a reviewing court "second-guess counsel's assistance." Pinholster, 131 S. Ct. at 1403. A lawyer's "strategic choices" at trial are "virtually unchallengeable" when based on "reasonable professional judgments" about the case. Wharton v. Chappell, 765 F.3d 953, 967 (9th Cir. 2014). As to prejudice, a challenger must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would

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[3] Petitioner presented a declaration from a defense investigator who attested to Petitioner's statement that the cousin killed the victim. (Docket # 43-1 at 3-6.) However, the investigator admitted that he was unable to develop any leads or evidence to support this allegation. (Id. at 5.)

have been different." Padilla v. Kentucky, 599 U.S. 356, 366 (2010) (quotation omitted).

The failure to interview or elicit trial testimony from a key witness may lead to a finding of ineffective assistance. Howard v. Clark, 608 F.3d 563, 571 (9th Cir. 2010). However, a criminal defense attorney is entitled to reasonably balance limited resources with effective trial strategies. Pinholster, 131 S. Ct. at 1403. The duty to investigate and prepare a defense "is not limitless: it does not necessarily require that every conceivable witness be interviewed." Hendricks v. Calderon, 70 F.3d 1032, 1040 (9th Cir. 1995) (quotation omitted); Ennis v. Neven, 415 F. App'x 794, 796 (9th Cir. 2011) (same).

"Conclusory allegations" of ineffective assistance "which are not supported by a statement of specific facts do not warrant habeas relief." James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994). As a result, a prisoner must generally provide an affidavit from a potential witness showing that the witness would have provided testimony helpful to the defense. Dows v. Wood, 211 F.3d 480, 486-87 (9th Cir. 2000); Gentry v. Sinclair, 705 F.3d 884, 900 (9th Cir. 2013) (prisoner presented "no evidence to indicate why the failure" of lawyer to take action was unreasonable). "Speculation" about what a witness "could have said is not enough" to establish that an attorney provided ineffective assistance or that a defendant was prejudiced. Grisby v. Blidgett, 130 F.3d 365, 373 (9th Cir. 1997); Boutte v. Biter, 556 F. App'x 623, 625 (9th Cir. 2014) (defendant "cannot rely on speculation about what possible, unnamed witnesses might have said").

The Strickland test may apply to a claim of ineffective assistance by a lawyer in pretrial proceedings. However, when there is "no reasonable probability" that a defendant can "eradicate the showing of probable cause" based on the strength of the prosecution's case, a lawyer has not prejudiced a defendant by declining to call or question witnesses at a preliminary hearing.

Thomas v. Gipson, No. CV 11-180 JKS, 2014 WL 878905 at *9 (E.D. Cal. 2014); see also Johnson v. Foulk, No. C 12-5897 CRB (PR), 2014 WL 1620716 at *7 (N.D. Cal. 2014) ("Petitioner's conclusory claim that counsel failed to object to conflicting counts and to move to dismiss an unspecified count for lack of probable cause [at the preliminary hearing] is not enough to show that counsel's performance fell below an objective standard of reasonableness.") Additionally, because "questioning of witnesses at a preliminary hearing by the defense is severely limited" under state law, an IAC claim based on allegedly inadequate questioning of a victim can also be "completely speculative." Johnson v. Long, No. CV 13-1265 LJO GSA, 2014 WL 496921 at *13 (E.D. Cal. 2014).

"Surmounting Strickland's high bar is never an easy task." Padilla, 559 U.S. at 371. Establishing that a state court's application of Strickland was unreasonable under AEDPA "is all the more difficult." Richter, 131 S. Ct. at 778. The standards created by Strickland and Section 2254(d) at both "highly deferential"; and when the two apply in tandem, "review is doubly so." Id. at 788 (quotation omitted). Under such a review, a habeas court must determine (i) "what arguments or theories actually supported" the state court's decision (if explained in a reasoned decision) (Sully v. Ayers, 725 F.3d 1057, 1075 n.6 (9th Cir. 2013)), or (ii) those arguments or theories that "could have supported [ ] the state court's decision" (in the absence of a reasoned opinion) to reject the ineffective assistance of counsel claim. Richter, 131 S. Ct. at 786 (emphasis added).

3. Analysis

On doubly-deferential review, the Court finds no basis for habeas relief. In reviewing Petitioner's IAC claims, the state court identified and applied the correct constitutional standard based on a state law analogue to Strickland.[4] The court expressly found that Petitioner failed to demonstrate prejudice (the second component of Strickland), although the brief decision did not articulate a detailed basis for that conclusion. Nevertheless, several key arguments "could have supported" that decision. Id.

As to the father-and-son attorneys who represented Petitioner in pretrial proceedings before their disbarment, the state court could well have determined that there was "no reasonable possibility" of refuting the prosecution's probable cause presentation at the preliminary hearing. Thomas, 2014 WL 878905 at *9. The evidence of Petitioner's guilt – eyewitness testimony regarding both attacks, evidence of Petitioner's bloody clothes and flight from the crime scenes, and his recorded, Mirandized confession to the police – was certainly sufficient to establish probable cause and allow the case to proceed to trial. Petitioner fails to convincingly explain how any action by the lawyers could have materially affected the charging decision here. Furthermore, Petitioner offers no affidavit or evidence from any witness to suggest that the defense lawyer would have obtained favorable evidence from cross-examining the surviving victim at the preliminary hearing. In the absence of such proof, the unadorned claim of prejudice is entirely speculative. Grisby, 130 F.3d at 373.

The superior court also did not unreasonably apply Strickland to Petitioner's claims regarding how the pretrial lawyers dealt with Petitioner's obvious mental health issues. Petitioner contends that, from the text of the transcript of an early court hearing, the defense lawyer was not aware of Petitioner's apparent psychiatric problems. (Docket # 43 at 20-22.) Yet, the lawyer subsequently participated in competency proceedings on Petitioner's

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[4] Early v. Packer, 537 U.S. 3, 8 (2002) (state court need not have cited or even been aware of the controlling Supreme Court cases, "so long as neither the reasoning nor the result of the state court decision contradicts them").

behalf before and after his treatment at a state mental health facility. (Lodgment # 2, 2RT at A, B, C.) Moreover, even though the defense alternated between a plea of not-guilty-by-reason-of-insanity and not-guilty in pretrial proceedings, the case clearly proceeded to trial on the insanity plea. (Id. at H-3.) Issues regarding Petitioner's mental health were central to the trial. Again, the state court could reasonably have concluded that any deficient performance by Petitioner's pretrial lawyers caused him no prejudice in the pretrial or trial stages of the action.[5]

Turning to the alleged misconduct of Petitioner's lawyer at trial, the state court could have reasonably concluded that the claims of prejudice were speculative and unsupported. The amended petition recites a list of perceived problems with the defense lawyer's presentation, including the lack of a defense opening statement in the guilt phase, the refusal to challenge the intent component of the murder charge, and the failure to investigate whether the brother of the murder victim was actually the culprit. (Docket # 43 at 24-29.)

Petitioner offers no evidentiary support for these claims and no explanation from the lawyer regarding his trial strategy. James, 24 F.3d at 26; Dows, 211 F.3d at 486-87. As a result, the state court could reasonably have found that Petitioner did not establish prejudice under Strickland. The state court could clearly have concluded that Petitioner was not injured by the absence of an opening statement in a short trial (the guilt phase apparently took less than four

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[5] Petitioner seizes on a candid comment from the trial judge – at a hearing after the court learned of the State Bar proceedings against Petitioner's lawyers – in which the judge opined that the lawyers "abandoned" Petitioner when they were suspended from practice. (Lodgment # 2, 2RT at F-2.) That comment in no way equates to the type of attorney abandonment in which a lawyer "entirely fails to subject the prosecution's case to meaningful adversarial testing." United States v. Cronic, 466 U.S. 659 (1984). To the contrary, the trial court promptly reappointed the public defender to represent Petitioner, and then continued the trial to allow Petitioner's private lawyer to enter the case and prepare for trial.

full trial days). The superior court order expressly found that the claim that Petitioner's trial lawyer was deficient for not presenting evidence that the victim's brother "committed the murder is without merit." (Lodgment # 10.) That was not an unreasonable application of the deficient-performance component of Strickland in light of the overwhelming evidence that Petitioner committed the crime. The superior court also tacitly recognized that the "theory" advanced on habeas review derived solely from the uncorroborated statement of the delusional, schizophrenic defendant after he confessed to the killing. The state court did not act unreasonably in concluding that this claim did not warrant further consideration.[6] Pinholster, 131 S. Ct. at 1403.

Further, the state court could reasonably have deferred to the lawyer's "strategic choice" to deemphasize evidence of Petitioner's mental illness during the guilt phase (the intent-to-kill claim) and present persuasive expert testimony on the issue during the sanity phase. In the absence of evidence to the contrary, the lawyer's trial conduct and decision-making are precisely the exercises of judgment that are shielded from appellate second-guessing. Wharton, 765 F.3d at 967.

Finally, the IAC claims regarding the trial lawyer's performance during the sanity phase are equally as speculative. Petitioner contends that his lawyer did not understand the fundamental procedure by which the parties presented proof during that portion of the trial. (Docket # 43 at 33-36.) Yet, the lawyer: (a) retained an expert psychiatrist; (b) produced a report of the expert's findings; (c) ably directed the witness's testimony before the prosecution's presentation; (d) effectively cross-examined the prosecution's expert; and (e) gave a cogent

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[6] Further, the investigator's recitation of Petitioner's statement was itself hearsay not subject to any clear exception. Petitioner's suggestion that the lawyer was deficient for failing to call the investigator to "testify about what he heard from [Petitioner]" – testimony that undoubtedly was inadmissible – is an untenable claim of attorney error. (Docket # 56 at 6.)

closing argument regarding the evidence of Petitioner's mental condition. The minor points and observations that Petitioner now makes about the lawyer's performance do not convincingly demonstrate that Petitioner was prejudiced by any attorney error. Wharton, 765 F.3d at 967. Further, there is no proof that the lawyer materially erred in failing to get additional information regarding another hospitalization to add to the voluminous – and uncontradicted – evidence of Petitioner's diagnosed mental illness. Hendricks, 70 F.3d at 1040. The superior court was within its bounds to find that the lawyer was not ineffective in his performance during the sanity phase.

Directly put, Petitioner offers no legitimate, supported basis from which the superior court could have found that any of Petitioner's lawyers acted in a constitutionally deficient manner. Petitioner presents no proof that any alleged misconduct caused him prejudice in light of the powerful evidence of his criminal culpability. In deferentially reviewing the state court decision, the Court cannot find that the superior court unreasonably applied Strickland in Petitioner's case.

D. Instructional Error and Judicial Misconduct (Ground 4)

Petitioner alleges that the trial court erred by failing to give a jury instruction on the lesser included offense of voluntary manslaughter. He also contends that the trial judge improperly commented on the evidence and disparaged Petitioner's psychiatric expert in the presence of the jury. (Docket # 43 at 29-33.)

On habeas review, the state superior court denied relief on these claims of "trial court error" by citation to In re Reno, 55 Cal. 4th 428 (2012). (Lodgment # 10.) A Reno denial (based on the state supreme court's earlier decision in In re Dixon, 41 Cal. 2d 756, 759 (1953)) signifies that the claims could have been asserted on direct appeal, but were not, which precludes further consideration.

On this basis, the Attorney General asserts that Petitioner's claims are procedurally barred in this Court. (Docket # 48 at 34.)

Under AEDPA, a claim is procedurally barred from federal review when: (1) a state court declines to address a petitioner's federal claims because of failure to comply with a state procedural requirement; and (2) the state court decision rests on independent and adequate state procedural grounds. Coleman v. Thompson, 501 U.S. 722, 729-30 (1991). Numerous federal courts have found that California's Dixon bar (and as repeated in Reno) is an adequate and independent state rule that will support a procedural bar. See Bennett v. Mueller, 322 F.3d 573, 586 (9th Cir. 2003); Cree v. Sisto, No. CV 08-487 AK, 2011 WL 66253 (E.D. Cal. 2011) (Kozinski, C.J., sitting by designation); Cantrell v. Evans, No. CV 07-1440, 2010 WL 1170063 (E.D. Cal. 2010) (McKeown, C.J., sitting by designation). As a limited exception to the procedural bar doctrine, a federal court may still consider the claim if petitioner shows: (1) good cause for his failure to exhaust the claim and prejudice from the alleged constitutional violation; or (2) a fundamental miscarriage of justice. Cooper v. Neven, 641 F.3d 322, 327 (9th Cir. 2011).

In neither the Second Amended Petition nor the reply submission did Petitioner's attorney address the impact of the state court's Reno denial on the viability of Petitioner's federal claims. Also, after the Attorney General affirmatively raised the procedural bar as a basis for this Court to deny relief on these claims, Petitioner did not respond to the issue. Further, nowhere in Petitioner's papers did he attempt to meet the Cooper cause-prejudice-miscarriage test to obtain relief from the procedural bar. As a result, the Court concludes that the state court's ruling operates as a procedural bar to federal consideration of Petitioner's collected "trial error" claims.

Were the Court to reach the merits of Petitioner's claims, though, Petitioner still would not be entitled to relief. Petitioner identifies no clearly established federal law that the trial court allegedly applied unreasonably in rejecting the requested voluntary manslaughter instruction. Solis v. Garcia, 219 F.3d 922, 929 (9th Cir. 2000) (failure to give a lesser included offense instruction in a non-capital criminal case "fails to present a federal constitutional question and will not be considered in a federal habeas corpus proceeding"). Further, the trial judge determined that there was "no evidence" to support the instruction as a matter of state law. (Lodgment # 2, 3RT at 934-35.) That finding is "entitled to a presumption of correctness" and is essentially unreviewable in the federal habeas context.[7] Menendez v. Terhune, 422 F.3d 1012, 1029 (9th Cir. 2005).

Petitioner's remaining claims of misconduct by the trial judge are too thin to lead to relief. The standard for reversing a verdict on direct appeal because of a judge's misconduct during trial requires an "extremely high level of interference by the trial judge which creates a pervasive climate of partiality and unfairness." Duckett v. Godinez, 67 F.3d 734, 740 (9th Cir. 1995) (citations omitted). On habeas review, the standard is even higher: did "the state trial judge's behavior render[ ] the trial so fundamentally unfair as to violate federal due process under the United States Constitution"? Id.

After closely reviewing the trial transcripts, the Court has no basis to conclude that the two minor events that Petitioner identified (brief interactions

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[7] The Court recognizes that Petitioner now claims that he was entitled to a voluntary manslaughter instruction based on the theory that his mental illness prevented him from forming the requisite intent to kill for the murder offense (as opposed to, say, having been provoked to kill by his paraplegic, wheelchair-bound victim). (Docket # 43 at 30-31.) However, the jury heard insufficient evidence about Petitioner's mental illness in the guilt phase of the trial to warrant the manslaughter instruction. As discussed above, the defense lawyer made the plausible strategic decision to present this evidence in the sanity phase. The trial judge was therefore correct in deciding not to give the unsupported instruction.

between the judge, the jury, and an expert witness) could possibly have been "so fundamentally unfair" as to meet the standards identified in Duckett. Directly put, the trial judge's actions did not demonstrate an "extreme malfunction" of the state criminal justice system that must be corrected on federal habeas review. Richter, 131 S. Ct. at 786

E. Cumulative Error (Ground 8)

Petitioner argues that the combined effect of errors at trial infected the trial with unfairness so as to violate his constitutional rights. The "combined effect of multiple trial errors may give rise to a due process violation" if it renders a trial fundamentally unfair, even where each error considered individually would not require reversal. Parle v. Runnels, 505 F.3d 922, 927 (9th Cir. 2007) (citing Chambers v. Mississippi, 410 U.S. 284 (1973), and Montana v. Egelhoff, 518 U.S. 37, 53 (1996)). However, where there is no single constitutional error, there is "nothing to accumulate to a level of a constitutional violation." Mancuso v. Olivarez, 292 F.3d 939, 957 (9th Cir. 2002). In the present case, the Court finds that none of Petitioner's claims rises to the level of constitutional error. Because none of Petitioner's separate arguments is meritorious, his cumulative error claim fails as well.

IV. CONCLUSION

IT IS THEREFORE RECOMMENDED that the District Judge issue an order: (1) accepting the findings and recommendations in this Report; (2) directing that judgment be entered denying the Petition; and (3) dismissing the action with prejudice.

Dated: March 17, 2015

HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GRAY MARIA, Petitioner, v. RANDY GROUNDS, Warden, Respondent.	Case No. CV 13-1183 DSF (MRW) ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court reviewed the petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court engaged in a de novo review of those portions of the Report to which Petitioner objected. The Court notes that, after the filing of the Report and Recommendation, the Ninth Circuit decided Lee v. Jacquez, 788 F.3d 1124 (9th Cir. 2015). The Court need not decide the impact of Lee here because the Report and Recommendation alternatively addressed the merits of the potentially barred claims. The Court accepts the findings and recommendation of the Magistrate Judge.

IT IS ORDERED that Judgment be entered denying the petition and dismissing this action with prejudice.

Dale S. Fischer

DATE: July 30, 2015

HON. DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GRAY MARIA, Petitioner, v. RANDY GROUNDS, Warden, Respondent.	Case No. CV 13-1183 DSF (MRW) 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.

DATE: July 30, 2015

Dale S. Fischer

HON. DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

AUG 30 2013

John A. Clarke, Executive Officer/Clerk
By J. Sanders, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALORNIA, Plaintiff, vs. GRAY MARIA, Defendant	Case No. : VA096024 Order Denying Petition for Writ of Habeas Corpus

The court has read and considered the Petition for Writ of Habeas Corpus.

The Petition for Writ of Habeas Corpus is denied for the following reasons:

As to the claim of ineffective assistance of counsel regarding Stephen Rodriguez Sr and Stephen Rodriguez Jr, the court notes that each counsels' representation was limited to representation pre-trial and Petitioner has failed to demonstrate that there is a reasonable probability that effective counsel would have achieved a more favorable outcome. In re Cox (2003) 30 Cal. 4th 974

As to the claim of ineffective assistance of counsel regarding Franklin Peters, Petitioner has failed to demonstrate that but for counsel's allegedly deficient performance there is a reasonable probability that a more favorable outcome would have resulted. The assertion that counsel was deficient for not presenting a third party defense based on Defendant's statement that the decedent's brother committed the murder is without merit.

As to the claim of prosecutorial misconduct and trial court error, those claims could have been raised on appeal but were not. Petitioner has failed to allege facts establishing an exception to the rule barring habeas consideration of claims that could have been raised on appeal. In re Reno (2012) 55Cal 4th 428

As to the claim of ineffective assistance of appellate counsel, Petitioner has failed to show that appellate counsel's exercise of professional judgment was deficient or that but for counsel's errors, the outcome of the appeal would have been different. Appellate counsel is not required to raise every non-frivolous issue and Petitioner alleges no more than a failure to raise issues. Smith v Robbins (2000) 528 U.S.259

The Court finds no merit in the argument that Petitioner was prejudiced by cumulative error throughout the trial and appeal.

RAUL A. SAHAGUN

Dated: August 30, 2013

RAUL A. SAHAGUN
JUDGE OF THE SUPERIOR COURT

People v. Maria

Court of Appeal of California, Second Appellate District, Division Eight

January 12, 2012, Filed

B232005

Reporter
2012 Cal. App. Unpub. LEXIS 253 *; 2012 WL 90091

THE PEOPLE, Plaintiff and Respondent, v. GRAY MARIA, Defendant and Appellant.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

Prior History: [*1] APPEAL from a judgment of the Superior Court for the County of Los Angeles. Los Angeles County Super. Ct. No. VA 096024. Thomas I. McKnew, Judge.

Disposition: Affirmed.

Counsel: Jennifer A. Mannix, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, and Lawrence M. Daniels and James William Bilderback II, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

Judges: GRIMES, J.; BIGELOW, P. J., RUBIN, J. concurred.

Opinion by: GRIMES

Opinion

SUMMARY

Defendant Gray Maria was charged in March 2007 with the first degree murder of Mara del Real, with an allegation of personal use of a deadly weapon (a knife) (count 1), and with assault with a deadly weapon (a screwdriver) on Victor Najera (count 2). In January 2008 the trial court found defendant incompetent to stand trial, and several months later he was admitted to Patton State Hospital. In August 2008 the court found defendant had been restored to competency. Defendant pled not guilty/not guilty by reason of insanity to both charges. A jury found defendant guilty of both crimes and found the personal use allegation true. In the sanity phase of the trial, the jury found defendant [*2] was legally sane at the time each offense was committed.

Defendant's only contention on appeal is that the evidence does not support the jury's conclusion that he was sane when the crimes were committed. We find substantial evidence to support the jury's conclusion and we therefore affirm the judgment.

FACTS

1. The Guilt Phase of Defendant's Trial

Defendant, who has a history of severe mental illness, committed both crimes on the same day in June 2006 — first the assault and later the murder.

Victor Najera, the assault victim, was walking through a McDonald's parking lot when defendant got off a bus, walked up to Najera, told Najera he looked familiar and asked, "Where are you from?" Najera said he was not from anywhere and did not "gangbang." Defendant began hitting Najera, who ran inside the McDonald's to get away from defendant. Defendant followed Najera inside and, according to Najera's statement to police, pulled a knife from his pocket and stabbed Najera in his left shoulder. Defendant tried to stab him again and Najera ran out of the restaurant, followed by defendant. A security guard followed defendant as he walked away and yelled to defendant to stop, but defendant kept going. [*3] Then an object dropped from defendant's hand, and defendant kicked the object (the weapon with which he had assaulted Najera) down a storm drain. Defendant "took off" and the security guard ran after him, but gave up the chase after defendant went across Whittier Boulevard.

Defendant then went to the home of his cousin, Omar del Real, where he frequently spent a great deal of time. Omar was at home with his sister Mara, who suffered from cerebral palsy since birth and was unable to move her limbs. At first, Omar did not answer the door when defendant rang. Defendant lay down in front of the door in a fetal position. Eventually Omar let defendant in the house. Defendant, who was normally calm and happy, seemed agitated. He told Omar he had just had a fight with a gang member who had been staring at him, and he "wanted to kill the guy or something." Omar calmed defendant down and defendant took a shower. The three of them watched the television in Mara's room for a few minutes, and then defendant went to the kitchen. Omar heard him rattling the dishes, and went to the kitchen. Defendant slammed the refrigerator door and walked back to Mara's room, and Omar followed.

After a minute, Omar [*4] left Mara's room to go to his own room to get ready for school. From his room, he heard Mara moan, "like something I've never heard before." Omar ran into Mara's room and saw defendant on top of Mara. Omar pulled defendant off his sister and saw that Mara was bleeding from a big open wound in her neck; Mara could not breathe because the air would escape from the hole in her neck. Omar grabbed defendant, who did not resist, took defendant outside, locked the door, and called 911. When police and paramedics arrived, defendant was no longer there.

Mara died of multiple sharp-force injuries; she had 23 wounds to her neck, several of which would have been fatal. The police recovered a bloody sweatshirt and bandana that defendant had been wearing; a Whittier resident had found them lying on the ground and put them in a trash can.

The police arrested defendant the following day, at the Coral Sands Motel in Hollywood. The police advised defendant of his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436), and defendant said he did not want an attorney. A video of defendant's interview with the police was later played for the jury.

With respect to Mara's murder, defendant told police that [*5] he "kept hearing like, voices telling me to kill her, kill her and I felt like, you know, like everyone wanted me to do it. So I, I really didn't want to do it but . . . somehow I got like, . . . tricked into doing it. So basically, you know, I just did it." When Omar threw him out of the house, "I just went running, tried to get away. Took a bus, got a bus and . . . tried to find a hotel to stay in. That's what happened." And: "I remember that it, it wasn't really my will, you know. Like, I didn't really want to kill her but, you know, I felt like it was like, uh, it was like angels that came from heaven and they were saying, uh, you know, 'we're going to take her to a better place so just do it, so just do it 'cause she doesn't want to be here anymore.' So I just, I just thought, thought to myself, you know. And they told me, it's okay, you know, we'll take care of it, you know, like, they'll handle what happens. And I just did it."

Defendant told police he heard the voices telling him to kill Mara as soon as he walked in. He initially resisted, but then gave in and got a knife from the kitchen. First the voices told him "to kill the cat," and then "they tell me kill my cousin and [*6] then they told me that my cousin wants me to kill her. So, uh, . . . I didn't want to do it, you know." Defendant said that first he got a big knife, but the edge wasn't sharp enough; he had to get a sharper one "so it could be less painful than a, than a, than a piercing that's, that's not with a sharp object . . . ." The voices were telling defendant "that, uh, they want to kill me. So, you know, I had to get a weapon just in case when I go out, just in case someone want to kill me, you know, I can kill them." Defendant was going to get the knife for that purpose, "but in there the voices starting telling me to kill her, to kill her."

After getting the knife, defendant "was trying to make sure if it's true what they're telling me so, uh, I said, like, I was looking at my cousin and saying: Well, well is my cousin really telling me to kill her, you know? Then I thought like, if he tells me like, with his own voice to, to do it, then, then I'll do it. But he didn't but again I still did it, you know." Defendant said the voices "were telling me that he [Omar] wants to see me do it in person, like he wants to see, you know, the stabbing." But defendant did not stab Mara when Omar was [*7] in the room; he stabbed her just after Omar left the room. Defendant "took my time basically just to, uh, just to, uh, get myself like, to do it. And as soon as I was doing it, I just did it as fast as I can, 'cause I, I don't wanna like, uh, I don't it to be slow on her, you know?"

Defendant said he put the knife next to Mara's neck, and "then she looked at it and she didn't say nothing. So I was thinking like, maybe it's true. Maybe the voices are telling me that she does want me to kill her 'cause she wants to be a better, like a better, in a better body, because she's paralyzed." "So I just, you know, started, started and just stabbing like crazy." When police asked if he thought what he did was wrong, defendant replied: "Yeah, because I was confused, because first my cousin well, like, he was telling me like, and the voices were telling me, yeah, do it, do it, uh, go ahead. I'm gonna come this way and then you go do it. And next thing you know, he [Omar] comes attacking me. I say, what are you doing, what are you doing, what did he do, you know. Like, trying to pull me back."

Defendant described throwing his bloody clothes over a fence, taking a bus, "[a]nd basically that's where [*8] my whole, uh, you know, uh, mission started to try to like evade the police . . . ." Police asked him why he wanted to evade the police, and defendant replied: "'Cause I didn't want to get, I didn't want to get caught, you know. Nobody wants to like, gettin' caught for murder." Defendant took three buses and two trains before arriving in the Hollywood area. He eventually found a place with a vacancy and paid $80 for a room. Then defendant called his mother and his therapist, both of whom told him to turn himself in, but defendant did not want to do so; he wanted to go to his aunt's house in Mexico to hide out from the police: "Different location, uh, different, different law, you know."

Defendant told police he had never done anything "this severe" before: "Just fist fighting. You know, uh, somehow, I did do things but not with my own hands because somehow, you know, they, they told me that, uh, you know, that the Islam, you know, uh, that they, they were going to blow up the Twin Towers and I felt that it was, that it was, uh, you know, for my pleasure. So, uh, I kind of did like, rejoice a little bit from that, 'cause I was having problems and, you know, I just wanted to see people [*9] die, you know, so."

Defendant told police he had a history of psychiatric problems and had been diagnosed with "[s]chizophrenia and . . . bi-polar." He said that when he was in the hospital he was taking medication, but usually does not take it when he's out of the hospital. Sometimes he feels violent, but "I mostly refrain from acting, from acting upon things 'cause I don't want to get in more deeper trouble with the law, you know." When asked whether it was right or wrong to kill Mara, defendant replied, "It was, it was definitely wrong."[1]

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[1] This was the exchange between Sheriff's Detective Loman and Cooper and defendant:

"LOMAN: You know the differen[ce] between right and wrong and good and bad?

"[DEFENDANT]: Sometimes I fear I, sometimes I think I don't. Sometimes I think my mind is just, just wants to just, uh, take, just take [its] own path, you know. And, uh, just doesn't, just doesn't basically give a damn about anybody. So I try to like, uh, yeah, sometimes, sometimes, sometimes my mind, uh, just has [its] own speed, you know. And it just takes —

"LOMAN: But, but I think what my question is do you know the difference between right and wrong?

"[DEFENDANT]: Uh, right or wrong? I feel [*10] I don't. I think, I think like, uh, sometimes, uh, I know, like, I know what's beneficial for me. And basically I'm like kind of, uh, just greedy for what's beneficial for me." [¶] . . . [¶]

"LOMAN: But do you, even though, I think what you're saying even though you want what's beneficial for you, do you know the difference between right and wrong?" [¶] . . . [¶]

"[DEFENDANT]: Yeah, I do. It's just that —

"LOMAN: Was . . . it right or was it wrong to kill Mara?

"[DEFENDANT]: It was, it was definitely wrong.

"LOMAN: Okay. So you know there's a difference between right and wrong?

"[DEFENDANT]: Yeah, I do.

"LOMAN: Okay. Is it —

"COOPER: I think what you're saying — and correct me if I'm wrong is — you understand what the difference between right and wrong is but you just want to do what feels right for you. Is that what you're saying?

"[DEFENDANT]: Yeah. Even though I have to suffer the consequences.

"LOMAN: But you know the difference between right and wrong, you just don't always do the right thing?

"[DEFENDANT]: Yeah, exactly. By accident. By accident. 'Cause usually, usually like, uh, in my mind I usually don't, don't want to do evil, you know.

"LOMAN: Right. In your mind you don't, in your mind [*11] and your heart you don't want to do evil things?

"[DEFENDANT]: No, of course not, you know. I leave killing and all that evil, all that evil shit to other people. You know like, let them do it and I'll just like, you know, like kick back, you know. Uh-huh.

"LOMAN: Yeah, I understand exactly what you're saying. But let me ask you then, and, and uh, and also in, in your everyday life, um, do you, uh, do you care like, like in this instance. Do you care about what happened to Mara?

"[DEFENDANT]: Umm, yeah, I do 'cause sometimes I fear that the voices were lying and she really did suffer a lot.

"LOMAN: So that makes you feel bad?

When questioned about the voices, defendant said: "The voices are definitely there. They tell me to do more, you know. Like I'll think about like, oh, well, that, that lady, like, you know, I would probably stab her too. And they say, 'Do it, do it.' So like, you know, like, I don't do it 'cause I don't want to do it, you know."

The detectives also questioned [*12] defendant about the assault on Najera. Defendant said, "I don't even know who he was. He was just walking down the street." Defendant said that Najera "looked like a, like a wannabe like, tough guy . . . ." Najera had a knife, or a screwdriver like a pick; they started fighting; and the knife dropped. Najera went into the McDonald's, and defendant, who "had the knife now," waited for him to come out, but "the voices kept telling me, 'Just go get him. Just go get him.' So I just listened to the voices." Defendant went inside, got into a fight with Najera, and then ran off. "I just ran off. I threw the, on the gutter, inside the gutter I threw the, I threw the evidence. Security was chasing me so I just ran across the street and went straight to Mara's house."

Defendant also explained the writing police found in his backpack: "It's a type of writing that I just practice"; defendant described it as geometrical, based on 12 points: "all the letters equal 56 and they, it amounts to all the sounds, you know, that are used in, uh, communication . . . ." Defendant said he studied the Hebrew language and "got into trying to develop a new way of writing."

2. The Sanity Phase of Defendant's Trial

After [*13] the jury found defendant guilty of both crimes, two reputable psychiatrists testified in the sanity phase of the trial, Dr. Mark Jaffe for the defense and Dr. Stephen Mohaupt for the prosecution. Both psychiatrists, who trained together at the University of Southern California and were friends, agreed that defendant suffered from schizophrenia, including hallucinations and delusional conduct, and that he understood the nature and quality of his acts. They disagreed, however, on whether he was incapable of distinguishing right from wrong at the time he committed the offenses. In essence, Dr. Jaffe concluded that only after he killed Mara — when he saw Omar's reaction to Mara's stabbing — did defendant realize "that what he had done might not have been right . . . ." Dr. Mohaupt, on the other hand, while recognizing that defendant was struggling with severe psychotic symptoms at the time of the offenses, concluded, based on factors including defendant's behavior before and after the crimes, that defendant did not "truly believe[] that he was morally justified in attacking [Najera], or in killing Mara."

a. Dr. Jaffe's opinion

Dr. Jaffe interviewed defendant twice at the jail, reviewed the [*14] murder book, and reviewed psychiatric records and reports on defendant. The latter included records from Patton State Hospital, Alhambra BHC, and Kaiser Psychiatric Facility, and psychiatric reports prepared by three other court-appointed doctors and by Dr. Mohaupt. He diagnosed defendant with chronic paranoid schizophrenia, as had other doctors beginning in 2005 or earlier. A prominent feature of this illness is the person's chronic paranoid delusions that others are trying to hurt or kill him or her.

"[DEFENDANT]: Uh, yeah. Sometimes, sometimes, uh, it's up and down when the — Sometimes when, I, uh, when the vision, images come in my head and then it gets me like, it does, it does, uh, make me feel that it was bad."

Dr. Jaffe opined that defendant was legally insane at the time of both crimes. During Dr. Jaffe's interviews, defendant expressed delusion and ongoing auditory hallucinations, with grandiose beliefs "that he was a prophet and that he was writing a special alphabet that could communicate to people in every different language." Defendant believed that the driver of the bus on which he was riding just before he assaulted Najera was putting thoughts in his head, and he had to prove he was brave to show people that he was a prophet; he would do so by attacking a person he saw walking on the street. Defendant also believed people were trying to kill him, and thus he was carrying a weapon at [*15] the time. Defendant believed angels were talking to him, that his thoughts were being broadcast out loud so that other people could know what he was planning to do, and that he was "fulfilling God's mission."

Dr. Jaffe determined that, at the time of the murder, defendant was "hearing a lot of voices which were commanding him to kill the victim"; he believed these were voices from angels and he was carrying out God's plan. Defendant had an "altruistic delusion" — a delusion "where somebody believes that they are going to do someone a good service and be unselfish and help somebody out, and that was what led to the murder." Defendant also had other delusions at the same time; he heard a wall crack and "interpreted that to mean that it was right to kill the victim. [¶] He also misinterpreted — because of his delusions — a look that he received from [Omar] that told him, 'I want you to do this, I'm not going to stop you from killing her.'" Defendant also had the delusion that, because the victim said nothing when he showed her the knife, she wanted him to kill her. Dr. Jaffe continued:

> "And so in that way, [defendant] did not understand right versus wrong due to his mental illness and did [*16] not understand the moral wrongfulness of his actions. [¶] And to investigate that further, I asked him, what would you have done if 12 people were standing there watching you do this? Would you . . . still have done the crime in front of them? And he had said, yes, he would have because he would have believed that those 12 people were there, they would have heard his thoughts, known what his mission was about, and that this was something that he had to do, and it was going to help the victim."

Defendant believed the victim would be reincarnated, "free and liberated and able to come back as a different person, and she would be happy."

Dr. Jaffe explained defendant's statements to the police the day after the crimes (to the effect that killing Mara was "definitely wrong") and his actions after the murder:

> "[I]t was only after he had committed the crime that he realized that what he had done might not have been right because his cousin at that time, after his cousin came upon him and saw him with the victim who was bleeding and dying, was upset and threw him out of the house. And at that time I think [defendant] realized that, you know, this maybe was not what he had thought was going to [*17] happen. And so he left at that time. [¶] However, . . . I believe he expected his cousin to walk in and say, great, this is exactly what I wanted, then he would not have run, he would have then done something else in keeping with the delusions that he had, that he was carrying out the wishes of his — of the victim and his cousin, and angels."

Dr. Jaffe also described for the jury defendant's several hospitalizations prior to and after his commission of the crimes, as well as reports from several doctors who treated him, all reflecting defendant's severe mental illness, including "very distressing auditory hallucinations" and an attempt to jump off a building "to kill himself and have the voices stop."

b. Dr. Mohaupt's opinion

Dr. Mohaupt interviewed defendant in December 2008. In addition, he reviewed the arrest and autopsy reports, the transcript of defendant's confession, the preliminary hearing transcript, a report from Patton State Hospital, Dr. Jaffe's report, and a report of one of the other doctors.

Dr. Mohaupt described Najera's assault as defendant reported it to him, all substantially as previously described: Defendant believed there was some kind of telepathic communication [*18] with the bus driver that involved "go, attack this person." Najera's appearance as a "tough guy" was defendant's "signal to attack him." Dr. Mohaupt found it significant that defendant fled from the location and threw the screwdriver into the storm drain: "If someone . . . tries to conceal that weapon, it appears that they are taking an action to avoid being caught with the weapon, indicating that they understood that they should not have engaged in this behavior"; and, "[s]ecurity arrives and he flees the location which implies he understood here's someone, I might get in trouble, I better get out of here, and at the same process, he drops the weapon in the storm drain." As for "moral wrongfulness":

> "As I look through the story, what led him to assault this individual was the signal from the bus driver and that this guy looked like a tough guy. And those were the precursors. It doesn't appear as if he believed that this individual was going to kill him or was going to cause the world to come to an end, or was going to explode a bomb. Within the version of events that the defendant told me about, there's no delusional material that would justify his actions."

As for the murder, Dr. Mohaupt [*19] likewise concluded that defendant understood the moral wrongfulness of his actions:

> "[Defendant] described to me that the thought came across his mind that Omar wanted me to do it while he was in the room; perhaps I should stab her while he's in the room because he did believe that Omar wanted him to go through with this and to kill her. But he did wait until Omar left the room before he stabbed her. . . . [¶] So waiting until he leaves the room[] as opposed to just walking in with the knife and starting to stab her after he receives the signal, to me, supports that he understood the wrongfulness of his actions."

Dr. Mohaupt also explained that many patients with schizophrenia have auditory hallucinations or voices telling them to kill themselves or hurt other people, but they are able to ignore the voices. In considering the wrongfulness issue — "was this the right thing to do in [defendant's] mind," because of a delusion or false belief — Dr. Mohaupt testified that "there really was no delusion present . . . that would justify taking her life in his mind at the time, other than the variety of psychotic symptoms he was experiencing that were encouraging him to follow through." Thus, [*20] Dr. Mohaupt was "of the opinion that there wasn't a false belief present in the defendant's mind to morally justify his actions." Other factors Dr. Mohaupt considered were that defendant ran from the scene after the murder and attempted to dispose of his bloody sweatshirt — behavior consistent with "someone that understood the wrongfulness of their actions," both legally and morally:

> "I think he knew the legal wrongfulness, and that's what he was struggling with as he was preparing to kill her, and he described that. You know, should I do it? Should I not do it? Attempting to communicate with his cousin. I don't believe that there was enough of a reason there morally that when he went forward with the crime, so I believe as he discarded the sweat shirt, that it supports that he knew it was wrong, legally as well as morally, and he was attempting to get away and think, you know, going to Tijuana at that point."

Dr. Mohaupt testified that defendant's response to investigators the day after the murder that it was "definitely wrong" to kill Mara also supported the conclusion that defendant understood the wrongfulness of his actions, as the question was posed "a short time after the crime [*21] occurred, and they ask him in a very straight fashion is this right or is this wrong?"

Dr. Mohaupt further stated that he had reviewed Dr. Jaffe's report and it did not change his opinion. He described the primary difference between their perspectives as Dr. Jaffe's belief that defendant's symptoms — the bus driver's signal, defendant's belief he was a prophet, and so on — "were so strong that [defendant] didn't understand the wrongfulness of his actions." Dr. Mohaupt came to a different conclusion:

> "I recognize that [defendant] has schizophrenia. He had a number of severe psychotic symptoms and he was struggling with those symptoms at the time of the offense, and I recognize that he felt — he's felt compelled to do these behaviors. However, I don't feel that he — he truly believed that he was morally justified in doing these behaviors. I felt that he — he had — he felt compelled to do it because of the voices telling him to do it, the signal from the bus driver, the belief that he was a prophet, but I don't believe that at any point in these behaviors he — he truly believed that he was morally justified in attacking this person, or in killing Mara."

Further, Dr. Mohaupt testified that [*22] it was very important to review the defendant's actual conduct before, during and after the crime, as well as the defendant's subjective report of what happened: "When you get a few months down the road and [a schizophrenic person with hallucinations is] now on medications and they are doing better, they may not have a real good memory of what took place, or they may not be able to give you an accurate recollection of what took place, and it's just the nature of the illness, that it becomes very confusing. . . . [¶] So the behavior of what that person does also is very important to pay attention to because it gives me a rough idea as to what their thought process perhaps did involve as they went through the different steps that took place during the crime."

Dr. Mohaupt found this a "challenging case" because defendant had a moderate amount of symptoms "but not to the point where he didn't know his behaviors and actions." Dr. Mohaupt explained that there were "two different routes" to overcome the presumption of sanity and determine that a person did not understand right from wrong: "either an enormous amount of symptoms where the person is just completely illogical, you cannot communicate [*23] with them to any significant degree, or in [defendant's] situation, with moderate amount of symptoms, is there a delusional belief," a "fixed false belief":

> "So as I'm evaluating his case, I'm really looking to try and determine what was going on with his symptoms, what symptom did he have that interfered with his understanding so that he believed his actions were justified. [¶] Not that he felt compelled to act and assault someone or kill someone, not that he felt pressure to do it, but that he believed the action was the right thing to do. It was morally the correct action to take. [¶] And so that is a challenge with the case, because he did have quite a few psychotic symptoms, and the legal presumption is someone commits a crime, they are sane until proven otherwise, so I'm looking to overcome that legal presumption so I'm looking for enough evidence. [¶] . . . I'm looking to find that he truly believed by a delusion or some other thought process that his action was justified. [¶] . . . [¶] . . . I didn't — I did not find enough delusional symptoms or psychotic symptoms that would satisfy me that I felt he overcame that presumption, that legal presumption that he was sane . . . ." [*24] [¶] . . . [¶] So what I'm looking [for] in [defendant's]

case is there a fixed false belief that allows him to say these crimes are justified because of my belief or because of this symptom."

Dr. Mohaupt further explained that a fixed false belief is "usually going to be more or less a steady situation. . . . I don't have that belief this minute and then two minutes later I don't believe it any longer. It's fixed. [¶] I might believe it to varying degrees. I might be really convinced right now, and two minutes later be a little bit less convinced, but I'm still convinced." Rapid fluctuation in realizing that something is wrong is uncommon; "I could see maybe a single fluctuation but not more than one."

On cross-examination, Dr. Mohaupt confirmed that his opinion "cannot be rendered with a high degree of certainty"; that "the data could be interpreted two different ways"; that "a high degree of certainty is stronger than a reasonable degree of certainty"; and that he was "able to render my opinion with [a] reasonable degree of medical certainty with the understanding that this is a hard case. He really had a lot of psychotic symptoms, and my assessment was it was a moderate degree of [*25] psychotic symptoms." Dr. Mohaupt also confirmed that he did not review and was not provided with a July 2007 report by Dr. Cherkas or the psychiatric records from Alhambra Psychiatric Hospital and Kaiser Permanente Hospital, although he was aware of defendant's suicide attempt and four different hospitalizations. Defense counsel also elicited a statement in Dr. Mohaupt's report that read, "'At that point [after the killing], [defendant] realized that he had done the wrong thing and made a terrible mistake.'" Dr. Mohaupt testified that the language in question was not his language or his analysis, but rather was "from the interview or documents reviewed," and that "you can't infer that the moment before he did not know it was not [*sic*] wrong — [¶] . . . [¶] — just because of what it states about this time period."

c. The verdict and sentence

The jury found the defendant was legally sane at the time of the commission of both offenses. The trial court denied defendant's motion for a new trial, and sentenced defendant to 25 years to life for the murder (Pen. Code, § 187, subd. (a)), an additional one year for the use of the knife (Pen. Code, § 12022, subd. (b)(2)), and the middle term of [*26] three years for the assault (Pen. Code, § 245, subd. (a)(1)), to be served concurrently, for a total term of 26 years to life.

DISCUSSION

Defendant contends the jury's sanity finding must be reversed "because there was no solid evidence" that defendant was legally sane when he assaulted Najera and murdered Mara del Real. We cannot agree.

The trier of fact may find a person not guilty by reason of insanity "only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." (Pen. Code, § 25, subd. (b).) While the statute uses the conjunctive "and" instead of the disjunctive "or," in *People v. Skinner* (1985) 39 Cal.3d 765 (*Skinner*), the Supreme Court construed Penal Code section 25 as reinstating the M'Naghten test as the test of legal insanity: "If the mental illness is manifested in delusions which render the individual incapable *either* of knowing the nature and character of his act, *or* of understanding that it is wrong, he is legally insane under the California formulation of the M'Naghten test." (*Skinner*, at p. 782, [*27] italics added.) And, a defendant "who is incapable of understanding that his act is morally wrong is not criminally liable merely because he knows the act is unlawful." (*Id.* at p. 783.)

"[T]he substantial evidence test applies to appellate review of a sanity determination . . . ." (*People v. Chavez* (2008) 160 Cal.App.4th 882, 891 (*Chavez*).) Some courts have phrased the issue as whether "the evidence of [defendant's] insanity was of such weight and character that a jury could not reasonably reject it." (*People v. Duckett* (1984) 162 Cal.App.3d 1115, 1120 (*Duckett*).)

We have described the evidence presented to the jury in some detail, and it is clear from the evidence that under any formulation of the substantial evidence rule, we are compelled to affirm the jury's finding. Defendant relies on *Duckett*, as well as on *Skinner* and *People v. Stress* (1988) 205 Cal.App.3d 1259, where the courts reversed findings of sanity. But this is obviously not a case like *Duckett*, where all the experts agreed the defendant was insane. (*Duckett, supra,* 162 Cal.App.3d at p. 1123 ["there were no circumstances present that would have permitted the jury to reject the [unanimous] expert opinion" that the defendant [*28] was insane].) Nor is this case like *Skinner* and *Stress*, where the trial courts applied the wrong test. (See *Skinner, supra,* 39 Cal.3d at p. 770 [trial court found the defendant was sane because he knew the nature and quality of his act, although he did not know that the killing was wrongful or criminal]; *Stress, supra,* 205 Cal.App.3d at p. 1274 [trial court erred "in concluding that 'wrong' mean[t] criminal rather than moral wrong"].)

This is a case much like *Chavez*, where the evidence regarding defendant's sanity was "quite conflicting," with one expert opining that defendant was insane and the other opining that he was sane. (*Chavez, supra,* 160 Cal.App.4th at p. 891.) Here, as in *Chavez*, "[i]t was for the jury to evaluate the testimony of the experts, examine the bases for their opinions and determine whom to believe." (*Ibid.*) Defendant claims that Dr. Mohaupt's "equivocation" — as he gave his opinion only with a reasonable degree of medical certainty rather than a high degree of certainty — combined with the fact that he did not review some of defendant's psychiatric records "rendered his conclusion flawed and of little evidentiary value." But that was for the jury, not this court, [*29] to decide. As in *Chavez*, because the substantial evidence test applies, and because defendant "has failed to demonstrate that [Dr. Jaffe's] opinion was of such weight that the jury could not reasonably reject it [citation], there is no basis on which we may disturb the jury's sanity finding . . . ." (*Ibid.*)

DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.