

APPENDIX A

OPINION of 9th Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 14 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JESUS ANTONIO ALDANA,

Petitioner-Appellant,

v.

KELLY SANTORO, Acting Warden,

Respondent-Appellee.

No. 17-56266

D.C. No.

2:17-cv-01338-DOC-FFM

Central District of California,
Los Angeles

ORDER

Before: GRABER, RAWLINSON, and BYBEE, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See Serine v. Peterson*, 989 F.2d 371, 372-73 (9th Cir. 1993) (magistrate judge's findings and recommendations not appealable; premature appeal not cured by subsequent entry of final judgment by district court). Consequently, this appeal is dismissed for lack of jurisdiction.

DISMISSED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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OCT 16 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JESUS ANTONIO ALDANA,

Petitioner-Appellant,

v.

KELLY SANTORO, Acting Warden,

Respondent-Appellee.

No. 17-56266

D.C. No.

2:17-cv-01338-DOC-FFM

Central District of California,
Los Angeles

ORDER

This court's September 14, 2017 order dismissed this appeal for lack of jurisdiction.

The Clerk shall transmit appellant's October 2, 2017 motion for certificate of appealability (Docket Entry No. 3) to the district court for filing as a notice of appeal from the district court's judgment entered on September 18, 2017. *See* Fed. R. App. P. 4(d).

No further action will be taken in this docket on Docket Entry No. 3.

This appeal remains closed.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Delaney Andersen
Deputy Clerk
Ninth Circuit Rule 27-7

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JESUS ANTONIO ALDANA,

11 Petitioner,

12 v.

13 KELLY SANTORO,

14 Respondent.
15

CASE NO. CV 17-1338-DOC(FFM)

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

16
17 This Report and Recommendation is submitted to the Honorable David O.
18 Carter, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order
19 05-07 of the United States District Court for the Central District of California. For the
20 reasons discussed below, it is recommended that the Petition be denied and the action
21 be dismissed with prejudice.

22
23 **I. PROCEEDINGS**

24 Petitioner Jesus Antonio Aldana, a state prisoner in the custody of the
25 California Department of Corrections, filed a Petition for Writ of Habeas Corpus by a
26 Person in State Custody pursuant to 28 U.S.C. § 2254 on February 17, 2017. On June
27 22, 2017, Respondent filed a return to the Petition. On July 13, 2017, Petitioner filed
28 a traverse. The matter, thus, stands submitted and ready for decision.

II. PROCEDURAL HISTORY

A Los Angeles County Superior Court jury convicted Petitioner of two counts of attempted willful, deliberate, and premeditated murder, three counts of assault with a deadly weapon, burglary, and corporal injury to a cohabitant (Cal. Penal Code §§ 664, 187, 245, 459). (See Lodged Doc. No. 5.) Thereafter, he was sentenced to a term of life in prison, plus fifteen years.

Petitioner appealed his conviction. On January 22, 2016, the California Court of Appeal filed an unpublished opinion affirming Petitioner's conviction. Petitioner then filed a petition for review in the California Supreme Court, which summarily denied the petition on March 30, 2016.

Petitioner then initiated this action.

III. FACTUAL BACKGROUND

The following facts were taken verbatim from the California Court of Appeal's opinion affirming Petitioner's conviction:

[Petitioner] and Ana D. were in a relationship that lasted for three and a half years before it ended abruptly in August of 2011 when [Petitioner] attacked Ana. At that time, Ana and [Petitioner] shared a two-bedroom apartment with Christian A., his girlfriend Cynthia S., and their one-year-old son Gabriel.

When Ana came home to the apartment on August 18, 2011, [Petitioner] grabbed her arm and pushed her into their bedroom, where he began to punch her in the head. Christian heard the commotion and started knocking on their bedroom door while Cynthia called the police. When [Petitioner] opened the door, Christian told him he was no longer welcome in the apartment. [Petitioner] realized that the police were on their way and he fled.

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1 [Petitioner] did not return or contact anyone in the apartment until the
2 night of the incident at issue.

3 On December 28, 2011, at about 11:00 p.m., Ana was sitting on
4 the couch alone in the living room watching television when
5 [Petitioner] walked in through the unlocked front door. Christian,
6 Cynthia, and Gabriel had already retired to their room for the night.
7 Ana testified that when [Petitioner] saw her, he said "[h]ere you are,
8 you damn woman," held her down, and began stabbing her with a
9 knife taped to his right hand. [Petitioner] told her, "No one is going
10 to help. You're going to die here." At that point Ana started to
11 scream for Christian. Hearing his name, Christian came out of his
12 bedroom and walked into the living room where he saw [Petitioner]
13 stabbing Ana. Christian grabbed [Petitioner] by the waist, picked him
14 up, and pushed him to the side. Ana hit [Petitioner] on the head with
15 a small fan and then ran to her bedroom. [Petitioner] then grabbed
16 Christian and threw him onto the couch, yelling at Ana that she was
17 going to die and telling Christian, "This happens to the dogs who fail
18 me." [Petitioner] stabbed Christian repeatedly.

19 Cynthia entered the living room in time to see Christian pull
20 [Petitioner] off Ana and then attack Christian. [Petitioner] held
21 Christian down with his left hand while he stabbed him repeatedly
22 with his right hand. Cynthia testified that [Petitioner] told Christian
23 in Spanish: "I'm going to kill you, dog." Ana hit [Petitioner] over the
24 head with a fan, but it did not stop the attack. Cynthia then grabbed a
25 stereo speaker and smashed it on top of [Petitioner's] head. After he
26 was hit, [Petitioner] "kind of stopped." [Petitioner] stood up and told
27 Christian, "I'm going to take what you love," and turned to Gabriel,
28 who had walked out of his parents' bedroom. When [Petitioner] took

1 a few steps toward Gabriel, Christian grabbed [Petitioner] by his
2 sweater and tried to pull [Petitioner] back towards him. As
3 [Petitioner] removed the sweater, Christian saw that [Petitioner] had a
4 knife taped to his right hand. Christian unsuccessfully attempted to
5 grab the knife from [Petitioner] as they continued to fight. Christian
6 eventually succeeded in pushing [Petitioner] out of the apartment.

7 Ana was hospitalized from December 28th until January 5th.
8 She had been stabbed four times in the back, puncturing her lungs,
9 and had a seven to eight inch long cut on her arm. She required
10 surgery on her lungs, hand, and arm, and was out of work for three
11 months. Christian had been stabbed more than ten times. He suffered
12 stab wounds to his head, face, chest, and arms which required
13 multiple staples and stitches, with about twenty stitches and staples in
14 his arm alone.

15 (Lodged Doc. No. 5 at 2-3.)
16

17 IV. PETITIONER'S CLAIM

18 The prosecutor failed to introduce sufficient evidence to support Petitioner's
19 conviction for the premeditated and deliberate attempted murder of Christian A.
20

21 V. STANDARD OF REVIEW

22 The standard of review applicable to Petitioner's claims herein is set forth in 28
23 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of
24 1996 ("AEDPA") (Pub. L. No. 104-132, 110 Stat. 1214 (1996)). See 28 U.S.C. §
25 2254(d); see also *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059, 138 L. Ed. 2d
26 481 (1997). Under AEDPA, a federal court may not grant habeas relief on a claim
27 adjudicated on its merits in state court unless that adjudication "resulted in a decision
28 that was contrary to, or involved an unreasonable application of, clearly established

1 Federal law, as determined by the Supreme Court of the United States,” or “resulted in
2 a decision that was based on an unreasonable determination of the facts in light of the
3 evidence presented in the State court proceeding.”¹ 28 U.S.C. § 2254(d); *see Williams*
4 *v. Taylor*, 529 U.S. 362, 402, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000).

5 The phrase “clearly established Federal law” means “the governing legal
6 principle or principles set forth by the Supreme Court at the time the state court
7 renders its decision.”² *Lockyer v. Andrade*, 538 U.S. 63, 71-72, 123 S. Ct. 1166, 155
8 L. Ed. 2d 144 (2003). However, a state court need not cite the controlling Supreme
9 Court cases in its own decision, “so long as neither the reasoning nor the result of the
10 state-court decision contradicts” relevant Supreme Court precedent which may pertain
11 to a particular claim for relief. *Early v. Packer*, 537 U.S. 3, 8, 123 S. Ct. 362, 154 L.
12 Ed. 2d 263 (2002) (*per curiam*).

13 A state court decision is “contrary to” clearly established federal law if the
14 decision applies a rule that contradicts the governing Supreme Court law or reaches a
15 result that differs from a result the Supreme Court reached on “materially
16 indistinguishable” facts. *Williams*, 529 U.S. at 405-06. A decision involves an
17 “unreasonable application” of federal law if “the state court identifies the correct
18 governing legal principle from [Supreme Court] decisions but unreasonably applies
19 that principle to the facts of the prisoner’s case.” *Id.* at 413. A federal habeas court

20
21 ¹ In addition, under 28 U.S.C. § 2254(e)(1), factual determinations by a state court
22 “shall be presumed to be correct” unless the petitioner rebuts the presumption “by
23 clear and convincing evidence.”

24 ² Under AEDPA, the only definitive source of clearly established federal law is set
25 forth in a holding (as opposed to dicta) of the Supreme Court. *See Williams*, 529 U.S.
26 at 412; *see also Yarborough v. Alvarado*, 541 U.S. 652, 660-61, 124 S. Ct. 2140, 158
27 L. Ed. 2d 938 (2004). Thus, while circuit law may be “persuasive authority” in
28 analyzing whether a state court decision was an unreasonable application of Supreme
Court law, “only the Supreme Court’s holdings are binding on the state courts and
only those holdings need be reasonably applied.” *Clark v. Murphy*, 331 F.3d 1062,
1069 (9th Cir. 2003).

1 may not overrule a state court decision based on the federal court's independent
2 determination that the state court's application of governing law was incorrect,
3 erroneous, or even "clear error." *Lockyer*, 538 U.S. at 75. Rather, a decision may be
4 rejected only if the state court's application of Supreme Court law was "objectively
5 unreasonable." *Id.*

6 The standard of unreasonableness that applies in determining the "unreasonable
7 application" of federal law under Section 2254(d)(1) also applies in determining the
8 "unreasonable determination of facts in light of the evidence" under Section
9 2254(d)(2). *Taylor v. Maddox*, 366 F.3d 992, 999 (9th Cir. 2004). Accordingly, "a
10 federal court may not second-guess a state court's fact-finding process unless, after
11 review of the state-court record, it determines that the state court was not merely
12 wrong, but actually unreasonable." *Id.*

13 Where more than one state court has adjudicated the petitioner's claims, the
14 federal habeas court analyzes the last reasoned decision. *Barker v. Fleming*, 423 F.3d
15 1085, 1091 (9th Cir. 2005) (citing *Ylst v. Nunnemaker*, 501 U.S. 797, 803, 111 S. Ct.
16 2590, 115 L. Ed. 2d 706 (1991) for presumption that later unexplained orders,
17 upholding judgment or rejecting same claim, rest upon same ground as the prior
18 order). Thus, a federal habeas court looks through ambiguous or unexplained state
19 court decisions to the last reasoned decision in order to determine whether that
20 decision was contrary to or an unreasonable application of clearly established federal
21 law. *Bailey v. Rae*, 339 F.3d 1107, 1112-13 (9th Cir. 2003).

22 23 VI. DISCUSSION

24 Petitioner contends that the prosecutor failed to introduce sufficient evidence to
25 support Petitioner's conviction for the premeditated and deliberate attempted murder
26 of Christian A. Although he concedes that he tried to kill Christian A., Petitioner
27 maintains that no evidence suggested that the attempted murder was deliberate and
28 premeditated. Rather, according to Petitioner, he attempted to kill Christian in the

1 spur of the moment because Christian A. interfered Petitioner's true plan -- which was
2 to kill Ana D. Petitioner acknowledges that he planned the murder of Ana D., but
3 claims that he did not even know if Christian A. would be present when Petitioner
4 attempted to carry through with his plan to kill Ana D. What is more, Petitioner
5 maintains that he had no motive to kill Christian A. The California Court of Appeal
6 rejected this claim on the merits. As discussed below, the court of appeal did not
7 commit constitutional error in doing so.

8 In rejecting this claim, the court of appeal applied the proper legal standard for
9 analyzing federal law challenges to the sufficiency of the evidence to support a jury's
10 verdict. (See Lodged Doc. No. 5 at 4-5 (citing *People v. Perez*, 2 Cal. 4th 1117, 1124,
11 9 Cal. Rptr. 2d 577, 831 P.2d 1159 (1992)).)³ Accordingly, the court of appeal's
12 resolution of Petitioner's claim was not contrary to the Supreme Court's clearly
13 established precedents. As such, the only avenue through which Petitioner can obtain
14 habeas relief on his sufficiency of the evidence claim is by showing that the court of
15 appeal's resolution of his claim constituted an "unreasonable application of" the
16 Supreme Court's clearly established precedent -- that is, he must show that the court
17 of appeal unreasonably applied the governing legal standard to the facts of his case.
18 See *Penry v. Johnson*, 532 U.S. 782, 792, 121 S. Ct. 1910, 150 L. Ed. 2d 9 (2001). As
19 explained below, Petitioner cannot make that showing.

20 Habeas relief is unavailable on a sufficiency of the evidence challenge unless
21 "no rational trier of fact could have agreed with the jury." *Cavazos v. Smith*, 565 U.S.
22 1, 2, 132 S. Ct. 2, 181 L. Ed. 2d 311 (2011) (*per curiam*); *Jackson v. Virginia*, 443
23 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). All evidence must be
24 considered in the light most favorable to the prosecution. *Jackson*, 443 U.S. at 319.

25
26 ³ In *Perez*, the California Supreme applied the standard set forth in *Jackson v.*
27 *Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), to determine
28 whether the evidence in that case was sufficient to support the jury's verdict. See
Perez, 2 Cal. 4th at 1224.

1 Accordingly, if the facts support conflicting inferences, reviewing courts “must
2 presume -- even if it does not affirmatively appear in the record -- that the trier of fact
3 resolved any such conflicts in favor of the prosecution, and must defer to that
4 resolution.” *Id.* at 326; *Bruce v. Terhune*, 376 F.3d 950, 957 (9th Cir. 2004) (*per*
5 *curiam*); *Turner v. Calderon*, 281 F.3d 851, 882 (9th Cir. 2002). Under AEDPA,
6 federal courts must “apply the standards of *Jackson* with an additional layer of
7 deference.” *Juan H. v. Allen*, 408 F.3d 1262, 1274 (9th Cir. 2005).

8 Furthermore, circumstantial evidence and inferences drawn from it may be
9 sufficient to sustain a conviction. *See Jones v. Wood*, 207 F.3d 557, 563 (9th Cir.
10 2000) (finding sufficient evidence for murder conviction where “evidence was almost
11 entirely circumstantial and relatively weak”). The reviewing court must respect the
12 exclusive province of the factfinder to determine the credibility of witnesses, resolve
13 evidentiary conflicts, and draw reasonable inferences from proven facts. *See United*
14 *States v. Goode*, 814 F.2d 1353, 1355 (9th Cir. 1987).

15 To prove deliberate and premeditated murder under California law, the
16 prosecutor must show that the defendant weighed the consequences and
17 considerations of his actions before he took the action leading to his conviction. *See*
18 *People v. Koontz*, 27 Cal. 4th 1041, 1080, 119 Cal. Rptr. 2d 859, 46 P.3d 335 (2002).
19 This showing, however, does not require proof that the defendant had a great deal of
20 time in which to weigh those consequences and considerations: “The process of
21 premeditation and deliberation does not require any extended period of time. The true
22 test is not the duration of time as much as it is the extent of the reflection. Thoughts
23 may follow each other with great rapidity and cold, calculated judgment may be
24 arrived at quickly. . . .” *Id.*

25 In considering whether the defendant acted with premeditation and deliberation,
26 California courts consider three categories of evidence: (1) prior planning activity; (2)
27 motive; and (3) the manner of killing. *Id.* at 1081. A guilty verdict as to premeditated
28 and deliberate murder “typically” will be “sustained ‘when there is evidence of all

1 three types'; otherwise, there must be "at least extremely strong evidence of (1) or
2 evidence of (2) in conjunction with either (1) or (3)." *Davis v. Woodford*, 384 F.3d
3 628, 640 (9th Cir. 2004) (citation omitted).

4 Here, the court of appeal reasonably concluded that the evidence at trial
5 supported the jury's verdict as to the premeditated and deliberate attempted murder of
6 Christian A. First, the prosecutor presented evidence suggesting prior planning on
7 Petitioner's part. There is no doubt that Petitioner deliberately planned to murder Ana
8 D. Indeed, he armed himself with a knife and, moreover, took steps to ensure that he
9 would not be disarmed during any kind of a struggle. Specifically, he taped the knife
10 to his hand. What is more, while stabbing Ana D., Petitioner tauntingly declared that
11 she was "going to die here." Further, once Christian A. intervened to protect Ana D.,
12 Petitioner had additional time to reflect and weigh the consequences of his actions
13 before repeatedly stabbing Christian A. Indeed, before stabbing Christian A.,
14 Petitioner ominously stated, "This happens to the dogs who fail me." What is more,
15 Petitioner, while repeatedly stabbing Christian A., declared, "I'm going to kill you,
16 dog." These actions support a reasonable inference that Petitioner reflected upon his
17 actions and made a conscious, cold, and calculated decision to kill Christian A.

18 Moreover, the jury reasonably could have inferred that, all along, Petitioner
19 intended to kill both Ana D. and Christian A. While it is clear that Ana D. was
20 Petitioner's primary target, Petitioner nevertheless was aware that Christian A. might
21 be there when Petitioner tried to carry out his attack on Ana D. Indeed, Christian A.
22 not only lived with Ana D., but he already had thwarted Petitioner's prior attack on
23 Ana D. What is more, Petitioner's act of taping the knife to his hand, coupled with his
24 knowledge of Christian A.'s history of protecting Ana D., supported a reasonable
25 inference that Petitioner taped the knife to his hand expecting to have to confront
26 Christian A.

27 The premeditation and deliberation on Petitioner's part as to Ana D., moreover,
28 easily could have established the requisite premeditation and deliberation as to the

1 attempt to kill Christian A. because the facts show that Petitioner intended to kill
2 someone and, in fact, tried to kill the person who placed himself between Petitioner
3 and his initial target. *See People v. Bland*, 28 Cal. 4th 313, 121 Cal. Rptr. 2d 546, 48
4 P.3d 1107 (2002) (“[A]ssuming legal causation, a person maliciously intending to kill
5 is guilty of the murder of all persons actually killed. If the intent is premeditated, the
6 murder or murders are first degree.”); *see also People v. Salas*, 7 Cal. 3d 812, 103 Cal.
7 Rptr. 431, 500 P.2d 7 (1972) (sufficient evidence supported premeditated and
8 deliberate murder conviction where defendant made clear during robbery that he
9 would kill anyone who interfered with robbery and, thereafter, killed officer who
10 attempted to stop Petitioner well after he had left robbery scene).

11 Second, the evidence also supported a reasonable inference that Petitioner had
12 motive to kill Christian A. Before the attack underlying Petitioner’s conviction
13 occurred, Christian A. not only had intervened when Petitioner was physically
14 attacking Ana D., he also had evicted Petitioner from the apartment that Petitioner had
15 shared with Ana D. and Christian A’s family. And, when Petitioner attempted to kill
16 Ana D., Christian A., once again, intervened to protect Ana D. Based on this
17 evidence, the jury reasonably could conclude that Petitioner sought to kill Christian A.
18 for both his prior act of preventing Petitioner from attacking and killing Ana D, as
19 well as for Christian A.’s prior act of throwing Petitioner out of the apartment in
20 which he lived. *See People v. San Nicolas*, 34 Cal. 4th 614, 668, 21 Cal Rptr. 3d 612,
21 101 P.2d 509 (2004) (“Evidence tending to establish prior quarrels between a
22 defendant and decedent and the making of threats by the former is properly admitted
23 . . . to show the motive and state of mind of the defendant.”) (citation and internal
24 quotations omitted); *People v. De Moss*, 4 Cal. 2d 469, 473, 50 P.2d 1031 (1935)
25 (explaining that “quarrels and separations of the parties, together with the threats of
26 defendant, establish sufficient motive for the killing”).

27 Moreover, as the court of appeal noted, the jury could have inferred that
28 Petitioner decided to kill Christian A. simply to eliminate any witnesses to what

1 Petitioner hoped would be the murder of Ana D. To be sure, Christian A. could have
2 identified Petitioner as the attacker. What is more, Petitioner also indicated his
3 willingness to kill another witness -- namely, Christian A.'s son. Indeed, after
4 attacking Ana D. and Christian A., both of whom Petitioner repeatedly stabbed,
5 Petitioner moved to attack the child, but, thankfully, was prevented from doing so by
6 the already wounded Christian A. Given these facts, the jury reasonably could have
7 concluded that Petitioner intended to eliminate all witnesses to his acts -- beginning
8 first with Christian A.

9 Third, the manner of the attempted murder evidences premeditation and
10 deliberation. In California, when manner-of-killing evidence strongly suggests
11 premeditation and deliberation, that evidence is enough, by itself, to sustain a
12 conviction for first degree murder. *See Drayden v. White*, 232 F.3d 704, 709 (9th Cir.
13 2000); *Davis*, 384 F.3d at 640 ("Under California law, 'when manner-of-killing
14 evidence strongly suggests premeditation and deliberation, that evidence is enough, by
15 itself, to sustain a conviction for first-degree murder.'") (citation omitted). As applied
16 here, this precedent forecloses Petitioner's challenge to the sufficiency of the
17 evidence. As stated earlier, Petitioner armed himself with a knife and took pains to
18 ensure that he would not be disarmed. Moreover, he stabbed Christian A. repeatedly,
19 and continued to do so even after obtaining a position of dominance over Christian A.
20 In total, Petitioner stabbed Christian A. more than ten times, including in his head,
21 face, chest, and arms. And, tellingly, Petitioner stabbed Christian A. more than twice
22 as many times as he stabbed Ana D. -- that is, the person whom he unquestionably
23 planned to kill. These facts easily support a finding that the attempted murder was
24 premeditated and deliberate. *See Jackson*, 443 U.S. at 325 (evidence of shooting of
25 multiple shots at close range indicates manner of attempted killing consistent with
26 premeditation and deliberation); *Koontz*, 27 Cal. 4th at 1082 (manner of killing
27 supported deliberate intent to kill where defendant fired close range shot "at a vital
28 area of the [victim's] body").

1 Finally, Petitioner's conduct after he had stabbed Christian A. over ten times
2 also supports the jury's conclusion that Petitioner attempted to kill Christian A. with
3 premeditation and deliberation. *See People v. Mayfield*, 14 Cal. 4th 668, 767, 60 Cal.
4 Rptr. 2d 1, 928 P.2d 485 (1997) (evidence of premeditation and deliberation included
5 "testimony that after the killing defendant said that 'he had to do it'"); *People v.*
6 *Perez*, 2 Cal. 4th 1117, 1128, 9 Cal. Rptr. 2d 577, 831 P.2d 1159 (1992)
7 ("Additionally, the conduct of defendant after the stabbing . . . would appear to be
8 inconsistent with a state of mind that would have produced a rash, impulsive
9 killing."); *Watson v. Brazelton*, 2015 WL 10692782, *7 (C.D. Cal. April 3, 2015)
10 (relying, in part, on petitioner's statement after murder to hold that state court
11 reasonably found that killing was premeditated and deliberate); *Horton v. McWean*,
12 2012 WL 6110488, *8 (C.D. Cal. Nov. 5, 2012) (explaining that petitioner's statement
13 to victim "immediately after the shooting . . . suggest[ed] that the shooting was not a
14 spontaneous reaction but something [p]etitioner had previously intended to do.").
15 Here, after repeatedly stabbing Christian A., Petitioner stated to Christian A., "I'm
16 going to take what you love." After having done so, Petitioner moved to attack
17 Christian A.'s child. Rather than showing that Petitioner acted rashly and impulsively
18 to the circumstances unfolding before him, these acts evidence a calculated decision
19 on Petitioner's part to exact revenge upon Christian A. As such, Petitioner's post-
20 attack actions serve to underscore the already reasonable inference that Petitioner, in
21 fact, had motive to kill Christian A.

22 Based on the foregoing facts, a reasonable juror could conclude that Petitioner
23 weighed the consequences and considerations of his actions and, having done so,
24 consciously and deliberately attempted to kill Christian A. Accordingly, the court of
25 appeal's rejection of Petitioner's sufficiency of the evidence claim was neither an
26 unreasonable application of, nor contrary to, clearly established federal law as
27 determined by the Supreme Court.

28 ///

VII. RECOMMENDATION

The Magistrate Judge therefore recommends that the Court issue an order: (1) approving and adopting this Report and Recommendation; and (2) directing that judgment be entered denying the Petition on the merits with prejudice.

DATED: August 2, 2017

/S/FREDERICK F. MUMM
FREDERICK F. MUMM
United States Magistrate Judge

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but are subject to the right of any party to timely file Objections as provided in the Local Rules Governing the Duties of the Magistrate Judges, and review by the District Judge whose initials appear in the docket number. No Notice of Appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the Judgment of the District Court.

Case: 2:17cv1338 Doc: 16

Jesus Antonio Aldana AU6531
North Kern State Prison
PO Box 5000
Delano, CA 93216

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Antonio Aldana v. Kelly Santoro Report and Recommendation (Issued) Content-Type: text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

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Case Name: Jesus Antonio Aldana v. Kelly Santoro

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Docket Text:

REPORT AND RECOMMENDATION issued by Magistrate Judge Frederick F. Mumm. Re
Petition for Writ of Habeas Corpus (2254), [1] : (see attached) The Magistrate Judge therefore
recommends that the Court issue an order: (1) approving and adopting this Report and
Recommendation; and (2) directing that judgment be entered denying the Petition on the merits
with prejudice.(jm)

2:17-cv-01338-DOC-FFM Notice has been electronically mailed to:

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