

# APPENDIX

A

UNITED STATES COURT OF APPEALS

**FILED**

FOR THE NINTH CIRCUIT

DEC 4 2025

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

ANTHONY WILLIAM BEESON,

Petitioner - Appellant,

v.

DAVID HOLBROOK, Warden, Ironwood  
State Prison,

Respondent - Appellee.

No. 25-2787

D.C. No. 2:22-cv-08067-FMO-DTB  
Central District of California,  
Los Angeles

ORDER

Before: HURWITZ and BRESS, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

# APPENDIX

## B

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ANTHONY WILLIAM BEESON,	}	Case No. 2:22-cv-08067-FMO (DTB)
Petitioner,		<b>REPORT AND</b>
v.		<b>RECOMMENDATION OF UNITED</b>
DAVID HOLBROOK,		<b>STATES MAGISTRATE JUDGE</b>
Respondent.		

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

**I.**  
**PROCEEDINGS**

On November 3, 2022, petitioner Anthony William Beeson (“Petitioner”), a California state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) pursuant to 28 U.S.C. § 2254, raising four grounds for relief. (Docket No. 1). On December 16, 2022, the

1 previously assigned Magistrate Judge issued an Order Requiring Response re  
2 Exhaustion as Petitioner failed to exhaust Ground Four of the Petition. In response,  
3 on January 6, 2023, Petitioner filed a motion for a stay and abeyance under Rhines  
4 v. Weber, 544 U.S. 269 (2005), asserting that his claim of evidentiary error in  
5 Ground Four of the Petition had not been presented to the California Supreme Court  
6 and that a stay was warranted while he exhausted his state court remedies for that  
7 claim.<sup>1</sup> (Docket No. 7). On January 10, 2023, the previously assigned Magistrate  
8 Judge granted Petitioner’s motion for a Rhines stay. (Docket No. 11). The matter  
9 was transferred to this Court’s calendar on November 22, 2023. (Docket No. 27).

10 Over one year later, on March 6, 2024, Petitioner filed a status report notifying  
11 the Court that he had completed exhaustion of Ground Four along with a copy of the  
12 California Supreme Court’s order denying his state habeas petition asserting the  
13 claim. (Docket No. 32). On March 14, 2024, the Court lifted the stay. (Docket No.  
14 33).

15 In accordance with the Court’s Order Requiring Response to Petition (Docket  
16 No. 34), Respondent filed an Answer on April 29, 2024, along with a supporting  
17 Memorandum of Points and Authorities and Notice of Lodging. (Docket Nos. 38,  
18 39). On June 26, 2024, after one *sua sponte* extension of time, Petitioner filed a  
19 Reply. (Docket No. 42). On December 2, 2024, Petitioner filed supplemental  
20 documents (“Pet. Supp. Doc.”). (Docket No. 49).

21 This matter is now ready for decision. For the reasons discussed below, the  
22 Court recommends that the Petition be denied.

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26 <sup>1</sup> Under Rhines, a district court may stay a “mixed” petition—that is, one that contains both  
27 exhausted and unexhausted claims—and hold the petition in abeyance while a petitioner exhausts  
28 an unexhausted claim in state court, so long as the following is shown: (1) There is good cause for  
the failure to exhaust; (2) the unexhausted claim is potentially meritorious; and (3) the petitioner  
has not intentionally delayed pursuing the claims. 544 U.S. at 278.

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II.

PROCEDURAL HISTORY

On September 3, 2015, a Los Angeles Superior Court jury found Petitioner guilty of the following crimes: Simple assault (Cal. Pen. Code § 240); simple battery (Cal. Pen. Code § 242); assault with intent to commit forcible rape (Cal. Pen. Code § 220(a)); assault with intent to commit forcible oral copulation (Cal. Pen. Code § 220(a)); oral copulation by force, fear, or threats (Cal. Pen. Code § 288a(c)(2)(C) (2015)); and sexual penetration by force, fear, or threats (Cal. Pen. Code § 289(a)(1)(C)). The jury also found true the allegations that Petitioner kidnapped the victim (Cal. Pen. Code § 667.61(d)(2)); that the victim was a minor over the age of fourteen (Cal. Pen. Code § 667.61(l)); and that Petitioner was previously convicted of oral copulation by force (Cal. Pen. Code § 667.61(d)(1)). (1 Clerk's Transcript on Appeal ["CT"] 243-59, 261-67; 9 Reporter's Transcript on Appeal ["RT"] 3302-16). In a bifurcated proceeding, the trial court found true the allegations that Petitioner had prior felony convictions. (2 CT 292-93; 9 RT 3601-09). On June 18, 2019, the trial court sentenced Petitioner to life in prison without the possibility of parole plus twelve years.<sup>2</sup> (2 CT 532-37, 544-48; 9 RT 4801, 4813-20).

Petitioner, represented by counsel, filed a direct appeal in the California Court of Appeal raising, *inter alia*, claims of instructional error, evidentiary error, and ineffective assistance of counsel that corresponded to, respectively, the claims in Grounds One, Two, and Three of the Petition. (Respondent's Notice of Lodging ["Lodgment"] No. 4). While his appeal was pending, Petitioner, through counsel, filed a habeas petition in the California Court of Appeal that again raised the ineffective assistance claim corresponding to Ground Three. (Lodgment No. 10).

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<sup>2</sup> In sentencing Petitioner, the trial court vacated and set aside the jury's verdict of simple assault. (9 RT 4817).

1 On May 26, 2021, the Court of Appeal affirmed the judgment in an  
2 unpublished reasoned decision and issued a separate order summarily denying  
3 habeas relief. (Lodgment Nos. 7, 11). Petitioner filed two Petitions for Review in  
4 the California Supreme Court that raised the same claims that he had presented to  
5 the Court of Appeal in his direct appeal and habeas petition. (Lodgment Nos. 8, 12).  
6 On August 11, 2021, the California Supreme Court summarily denied both Petitions  
7 for Review. (Lodgment Nos. 9, 13).

8 Between February 2023 and February 2024, while this action was stayed,  
9 Petitioner exhausted his state court remedies pertaining to Ground Four by raising  
10 the claim in a series of unsuccessful habeas petitions filed in the Los Angeles County  
11 Superior Court, the California Court of Appeal, and the California Supreme Court.  
12 (Lodgment Nos. 14-21). In particular, the superior court's habeas denial listed the  
13 following deficiencies: Petitioner did not assert a cognizable habeas claim; he failed  
14 to allege facts demonstrating a prima facie case for habeas relief; his claim could  
15 have been raised on appeal; and he failed to allege facts with the requisite  
16 particularity. (Lodgment Nos. 20, 21). At the appellate court level, Petitioner filed  
17 two habeas petitions asserting claims relating to Ground Four, which the California  
18 Court of Appeal summarily denied. (Lodgment Nos. 14-17). Lastly, the California  
19 Supreme Court rejected Ground Four in an order stating: "The petition for writ of  
20 habeas corpus is denied. (See In re Dixon (1953) 41 Cal.2d [at 759] [courts will not  
21 entertain habeas corpus claims that could have been, but were not, raised on  
22 appeal])." (Lodgment No. 19).

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**III.**

**SUMMARY OF THE EVIDENCE PRESENTED AT TRIAL**

Because Petitioner is not challenging the sufficiency of the evidence supporting his conviction, the Court adopts the following factual summary set forth in the California Court of Appeal's Opinion affirming his conviction (Lodgment No. 7 at 3-9):<sup>3</sup>

*September 7, 2013 sexual assault [¶] On September 7, 2013, 14-year-old Jane Doe went to a birthday party at a house in Covina with her younger brother Vincent, her father Michael, stepmother Anna, and Anna's granddaughter. [Footnote omitted.] A family friend, Robert Camposano, Sr. (Robert Sr.), his son Robert Camposano, Jr. (Robert Jr.), and Robert Sr.'s nephew, [Petitioner], were also at the party. [Petitioner] was 27 years old at the time. [¶] Several children at the party, including Jane, went swimming in the pool. After swimming, Jane changed her clothes in a bathroom inside the house. She then watched television in the living room with her brother and another child. Jane's father and stepmother were in the backyard with other partygoers. [¶] [Petitioner] entered the living room and asked Jane where the bathroom was located. Jane initially ignored [Petitioner], but when he asked a second time, she got up and showed him the door to the bathroom. When Jane turned and tried to walk*

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24           <sup>3</sup> On habeas review, a district court "presume[s] that the state court's findings of fact are  
25 correct unless [the] [p]etitioner rebuts that presumption with clear and convincing evidence."  
26 Tilcock v. Budge, 538 F.3d 1138, 1141 (9th Cir. 2008) (citations omitted); 28 U.S.C. § 2254(e)(1).  
27 Because Petitioner has not rebutted the presumption of correctness, the Court relies on the state  
28 court's factual summary. See Tilcock, 538 F.3d at 1141. However, to the extent that the Court's  
analysis of Petitioner's claims depends on an examination of the trial record, the Court herein has  
made an independent evaluation of the record specific to those claims.

1 away, [Petitioner] grabbed her by the arm and pushed her forcefully  
2 into the bathroom. Jane told [Petitioner], "Please let me go," and  
3 began to cry. [¶] [Petitioner] pushed Jane against the bathroom wall  
4 and forced her to sit down. He then closed and locked the bathroom  
5 door. Jane testified that [Petitioner] held a knife in his hand and  
6 pointed it at her eye. He said he would kill her if she ran or screamed.  
7 [¶] [Petitioner] demanded that Jane orally copulate him. He grabbed  
8 Jane by the head and forced her to do so by moving her head back and  
9 forth. [¶] [Petitioner] then made Jane lie down on the floor and  
10 removed her shorts and underwear. He got on top Jane, placed his  
11 hands around her neck, and choked her, making it difficult for her to  
12 breathe. [Petitioner] began to have sexual intercourse with Jane but  
13 stopped when someone knocked on the bathroom door. [Petitioner]  
14 shouted out that he was using the bathroom, and the person knocking  
15 eventually left. [¶] [Petitioner] then stood Jane up and told her to  
16 bend over. When Jane did so, [Petitioner] digitally penetrated her  
17 vagina with his fingers. [Petitioner] forced Jane to orally copulate him  
18 once more. He also orally copulated Jane's genital area. Before  
19 exiting the bathroom, [Petitioner] again threatened to kill Jane if she  
20 looked at him "with a scared face." [¶] After [Petitioner] exited the  
21 bathroom, Jane got dressed and left the bathroom. As she walked  
22 through the house she saw [Petitioner] leaving through the front door.  
23 Jane went to the backyard and told her stepmother and father [what]  
24 had happened. When Jane's father yelled at her, "Why didn't you do  
25 anything," Jane responded that [Petitioner] had a knife. [¶] Robert  
26 Sr. and Robert Jr. were both present when Jane disclosed the assault  
27 to her father. Robert Sr. and Robert Jr. accompanied Jane and her  
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1 family to the front yard, where Jane pointed out [Petitioner] sitting in  
2 a car. [¶] Jane's father pulled [Petitioner] out of the car and a  
3 physical altercation ensued between them. [Petitioner] claimed that  
4 Jane "wanted me" and "she was all over me." Robert Sr. separated  
5 the two men and then slapped [Petitioner]. When he did so, Robert Sr.  
6 noticed what appeared to be three hickeys on [Petitioner's] neck. He  
7 was sure that [Petitioner] did not have the hickeys before the party. [¶]  
8 Robert Jr. testified that he heard Robert Sr. tell Jane's father, "Hey  
9 dude, he has hickeys on his neck." Robert Jr. then looked at  
10 [Petitioner's] neck and observed marks that had not been there earlier  
11 in the day. Robert Jr. could not recall whether he mentioned the hickeys  
12 to the investigating police officer who later interviewed him about the  
13 incident. [¶] Robert Sr. testified that he heard Jane's father ask her,  
14 "Why did you give him hickeys?" Robert Sr. heard Jane respond, "He  
15 put a knife like that to me and made me do it." Robert Sr. admitted that  
16 he never told the investigating officer about the hickeys, even though  
17 he believed that information would be important. [¶] Detective Vega,  
18 the investigating officer in the case, testified that neither Robert Jr. nor  
19 Robert Sr. told her they had seen hickeys on [Petitioner's] neck on the  
20 night of the crime. The first time Vega heard about hickeys on  
21 [Petitioner's] neck was during the course of [Petitioner's] trial. [¶]  
22 **September 8, 2013 witness testimony** [¶] After the assault, Jane's  
23 parents took her to the police station and then to the hospital. Toyetta  
24 Beukes, director of the sexual assault response team at the San Gabriel  
25 Medical Center, examined Jane at approximately 2:00 a.m. on  
26 September 8, 2013. Beukes observed bruising under Jane's right eye,  
27 consistent with being choked, as well as bruises on Jane's right ear,  
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1 neck, and knee. Burkes also observed a puncture wound on Jane's right  
2 leg and an incised shaped wound on the back of her neck. Both wounds  
3 were consistent with knife injuries. Jane's genital area had bruising  
4 and laceration consistent with blunt force trauma. [¶] [Petitioner]  
5 was on parole and wore an ankle monitor at the time of his September  
6 7, 2013 assault on Jane. [Petitioner's] parole agent, Esmeralda  
7 Zamora, received a notification about [Petitioner's] ankle monitor at  
8 approximately 10:25 p.m. on September 7, 2013. Zamora contacted  
9 [Petitioner] and instructed him to come to the parole office the  
10 following day. [¶] Zamora met with [Petitioner] at 1:00 p.m. on  
11 September 8, 2013. She noticed injuries on [Petitioner's] face, as well  
12 as scratches on his cheek and neck. [Petitioner] told Zamora he was  
13 physically attacked at a party by several men who noticed his ankle  
14 monitor. [Petitioner] said the marks on his neck were hickeys from his  
15 girlfriend. Zamora testified, however, that the marks on [Petitioner's]  
16 neck were long, thin, straight scratches that did not resemble hickeys.  
17 [¶] [Petitioner] initially told Zamora that his ankle monitor had  
18 broken when he stepped hard on his vehicle's brake pedal during a tire  
19 blowout. When Zamora rejected [Petitioner's] explanation as  
20 implausible, [Petitioner] admitted to cutting off the ankle monitor and  
21 discarding it near the freeway. The ankle monitor was subsequently  
22 recovered approximately one mile from the parole office. [¶]  
23 [Petitioner]'s then girlfriend, Virginia Lopez, saw [Petitioner] between  
24 9:00 and 10:00 a.m. on September 8, 2013. She noticed bruising on  
25 [Petitioner's] face and purple marks on his neck and jaw. [Petitioner]  
26 told her he had kissed a girl at a party and someone had hit him.  
27 Virginia believed the bruises and marks she observed on [Petitioner's]  
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1 face and neck were injuries sustained when he was beaten. [¶]  
2 **Uncharged prior acts [¶] 2007 attempted assault of Elisa Doe [¶]**  
3 Elisa Doe testified that on November 29, 2007, at approximately 11:15  
4 p.m., she received a call from her friend Frank. Frank said that he had  
5 been drinking and had vomited in his truck. He asked Elisa if he could  
6 stop by for some water and to borrow a towel. Frank parked across  
7 the street from Elisa's home and walked to her door. He told Elisa that  
8 [Petitioner] was in the truck. Elisa knew [Petitioner], with whom she  
9 had been physically intimate in the past, but she had not seen him for  
10 several months. [¶] Approximately 30 minutes after Frank left,  
11 [Petitioner] entered uninvited into Elisa's home through the back door  
12 and sat down on a couch in the living room. Elisa asked [Petitioner]  
13 to leave. When [Petitioner] did not do so, Elisa yelled at him to "get  
14 out" and attempted to push him toward the back door. A struggle  
15 ensued. [Petitioner] grabbed Elisa's arms and moved behind her. He  
16 then placed his right forearm against her neck and his left hand over  
17 her mouth and said, "I'm just going to kiss you." [Petitioner] pushed  
18 Elisa into her bedroom, where she fell against her bed and then onto  
19 the floor. Elisa tried to scream but could not breathe. She kicked the  
20 bedroom wall to alert her aunt, who was in the next room. Elisa's  
21 mother and her mother's boyfriend were also in the house at the time.  
22 Elisa's aunt entered the bedroom while Elisa was on the floor and  
23 [Petitioner] was choking her. Elisa's aunt screamed for help and then  
24 ran to telephone the police. Elisa's mother's boyfriend detained  
25 [Petitioner] until the police arrived. [¶] Alfred Jaime, a detective with  
26 the Special Victim's Bureau Division of the Los Angeles County  
27 Sheriff's Department, testified that he responded to Elisa's home on  
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1 November 29, 2007. He saw Elisa was crying and observed redness  
2 and scratch marks on her neck. Jaime detained [Petitioner] and then  
3 transported him to the Pico Rivera station. While in the car, Jaime  
4 advised [Petitioner] of his Miranda [footnote omitted] rights. When  
5 they arrived at the station, Jaime gave [Petitioner] a second Miranda  
6 advisement. Jaime stated that he and [Petitioner] discussed  
7 [Petitioner's] knowledge of chokeholds. Jaime testified that  
8 [Petitioner] told him "that he ([[Petitioner]]) was a high school  
9 wrestler and he knew what a chokehold could do." [¶] Elisa suffered  
10 bruises on her neck and enlarged blood vessels on her face as a result  
11 of [Petitioner's] assault. She also experienced neck pain for several  
12 days. [¶] 2005 sexual assault of Klariza Doe [¶] Klariza Doe  
13 testified that she and [Petitioner] were close friends for two to three  
14 years and had been sexually intimate in the past. On May 21, 2005,  
15 between 2:00 and 3:00 a.m., [Petitioner] called Klariza and said he  
16 wanted to hang out with her. Klariza, who was on her way home, told  
17 [Petitioner] it was too late and hung up. [Petitioner] continued to call  
18 Klariza and she continued to tell him no. When Klariza arrived at her  
19 home, [Petitioner] called her again and said he was outside. Klariza  
20 opened the front door and saw [Petitioner] standing there. [Petitioner]  
21 told Klariza that he really wanted to hang out with her, so Klariza  
22 finally agreed. Klariza understood "hanging out" with [Petitioner] to  
23 mean talking and watching television. She told her grandmother she  
24 was going out with [Petitioner] and walked outside with him. [¶]  
25 Klariza thought they were going to [Petitioner]'s uncle's home nearby,  
26 but they went to an adjacent motel instead. [Petitioner] told Klariza he  
27 had been kicked out of the home and was renting a room in the motel.  
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1 Under the “unreasonable application” prong of § 2254(d)(1), a federal court  
2 may grant habeas relief “based on the application of a governing legal principle to a  
3 set of facts different from those of the case in which the principle was announced.”  
4 Lockyer, 538 U.S. at 76 (citation omitted); see also Woodford, 537 U.S. at 24-26  
5 (state court decision “involves an unreasonable application” of clearly established  
6 federal law if it identifies the correct governing Supreme Court law but unreasonably  
7 applies the law to the facts).

8 “In order for a federal court to find a state court’s application of [Supreme  
9 Court] precedent ‘unreasonable,’ the state court’s decision must have been more than  
10 incorrect or erroneous.” Wiggins v. Smith, 539 U.S. 510, 520 (2003) (citation  
11 omitted). “The state court’s application must have been ‘objectively unreasonable.’”  
12 Id. at 520-21 (citation omitted); see also Waddington v. Sarausad, 555 U.S. 179, 190  
13 (2009); Davis v. Woodford, 384 F.3d 628, 637-38 (9th Cir. 2004).

14 “Under § 2254(d), a habeas court must determine what arguments or theories  
15 supported, . . . or could have supported, the state court’s decision; and then it must  
16 ask whether it is possible fairminded jurists could disagree that those arguments or  
17 theories are inconsistent with the holding in a prior decision of this Court.”  
18 Harrington v. Richter, 562 U.S. 86, 101 (2011). This is “the only question that  
19 matters under § 2254(d)(1).” Id. at 102 (citation and internal quotations omitted).  
20 Habeas relief may not issue unless “there is no possibility fair minded jurists could  
21 disagree that the state court’s decision conflicts with [the United States Supreme  
22 Court’s] precedents.” Id. “As a condition for obtaining habeas corpus from a federal  
23 court, a state prisoner must show that the state court’s ruling on the claim being  
24 presented in federal court was so lacking in justification that there was an error well  
25 understood and comprehended in existing law beyond any possibility for fair minded  
26 disagreement.” Id. at 103.

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1 In applying these standards, the Court ordinarily looks to the last reasoned  
2 state court decision. See Wilson v. Sellers, 138 S. Ct. 1188, 1193-97 (2018)  
3 (endorsing presumption that unexplained decision of state higher court adopted the  
4 reasoning of the last reasoned state court decision); see Delgadillo v. Woodford, 527  
5 F.3d 919, 925 (9<sup>th</sup> Cir. 2008). Where no reasoned decision exists, as where the state  
6 court summarily denies a claim, “[a] habeas court must determine what arguments  
7 or theories . . . could have supported the state court’s decision; and then it must ask  
8 whether it is possible fairminded jurists could disagree that those arguments or  
9 theories are inconsistent with the holding in a prior decision of this Court.”  
10 Harrington v. Richter, 562 U.S. at 102; see also Cullen v. Pinholster, 563 U.S. 170,  
11 188 (2011).

12 Additionally, federal habeas corpus relief may be granted “only on the ground  
13 that [Petitioner] is in custody in violation of the Constitution or laws or treaties of  
14 the United States.” 28 U.S.C. § 2254(a). In conducting habeas review, a court may  
15 determine the issue of whether the petition satisfies § 2254(a) prior to, or in lieu of,  
16 applying the standard of review set forth in § 2254(d). Frantz v. Hazey, 533 F.3d  
17 724, 736-37 (9<sup>th</sup> Cir. 2008) (en banc).

## 18 VI.

### 19 DISCUSSION

#### 20 A. Petitioner is Not Entitled to Habeas Relief on his Claim of Instructional 21 Error in Ground One.

22 In his first ground for relief, Petitioner asserts that the trial court failed to instruct  
23 the jury on lesser included offenses. (Petition at 5).

24 Petitioner raised this claim on direct appeal. The California Court of Appeal  
25 issued a reasoned opinion denying relief, while the California Supreme Court denied  
26 review without comment or citation to authority. Accordingly, the Court considers  
27 the Court of Appeal’s opinion under AEDPA standard of review. See Ylst v.  
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1 Nunnemaker, 501 U.S. 797, 803 (1991); Shackleford v. Hubbard, 234 F.3d 1072,  
2 1079 n.2 (9th Cir. 2000) (district court “look[s] through” unexplained California  
3 Supreme Court decision to the last reasoned state court decision as the basis for the  
4 state court’s judgment).

5 1. Background.

6 An amended information charged Petitioner as follows: One count of forcible  
7 rape of a child victim over fourteen years of age (count one); three counts of forcible  
8 oral copulation on a minor victim over fourteen years of age (counts two, three, and  
9 four); and one count of forcible sexual penetration of a child victim over fourteen  
10 (count five). (1 CT 139-50).

11 At trial, in addition to giving instructions on the charged offenses, the trial  
12 court instructed the jury on the following lesser included offenses as to counts one  
13 through five: Assault with intent to commit a forcible sex crime (*i.e.*, forcible rape,  
14 forcible oral copulation, or forcible sexual penetration); simple battery; and simple  
15 assault. (1 CT 225-29).

16 The jury found Petitioner guilty on count one of the lesser included offenses  
17 of assault with intent to commit forcible rape, battery, and simple assault. As to  
18 count two, the jury found Petitioner guilty of the lesser included offenses of assault  
19 with intent to commit forcible oral copulation, battery, and simple assault. On counts  
20 three, four, and five, the jury found Petitioner guilty as charged. (1 CT 243-59).

21 2. The California Court of Appeal’s Decision.

22 On direct appeal, the California Court of Appeal considered and rejected  
23 Petitioner’s claim that the trial court erred by failing to instruct *sua sponte* on  
24 unlawful intercourse with a minor, unlawful oral copulation with a minor, and  
25 unlawful sexual penetration of a minor as lesser included offenses of, respectively,  
26 forcible rape (count one), forcible oral copulation (counts two through four), and  
27 forcible sexual penetration (count five). (Lodgment No. 7 at 10-16). First, the Court  
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1 of Appeal determined that, under California law, unlawful intercourse with a minor  
2 did not qualify as a lesser included offense of forcible rape. (Id. at 12-14). Next, as  
3 to the failure to instruct on nonforcible oral copulation with a minor, and nonforcible  
4 sexual penetration of a minor, the Court of Appeal determined that any error by the  
5 trial court was harmless given the substantial evidence that Petitioner used force and  
6 duress to sexually assault the victim, whom the Court of Appeal referred to as Jane.<sup>4</sup>  
7 (Lodgment No. 7 at 14). The Court of Appeal noted the following:

8 *Jane testified that [Petitioner] grabbed her by the arm, forcefully*  
9 *pushed her into the bathroom, and threatened to kill her if she resisted.*  
10 *Jane said that [Petitioner] shoved her against the wall and then to the*  
11 *floor and forced her to orally copulate him by moving her head back*  
12 *and forth with his hand. Jane further testified that [Petitioner] choked*  
13 *her, making it difficult for her to breathe, while sexually penetrating*  
14 *her. Jane's testimony was corroborated by a sexual assault*  
15 *examination, which revealed bruising and scratches on her arms, legs,*  
16 *neck, chin, and genital area, injuries consistent with forcible sexual*  
17 *assault. [¶] Jane's account of the assault was further corroborated by*  
18 *testimony from victims of [Petitioner]'s previous sexual assaults.*  
19 *Klariza and Elisa both testified that [Petitioner] choked them while*  
20 *sexually assaulting them. [¶] The evidence of nonforcible, consensual*  
21 *sexual contact, in contrast, was comparatively weak. Although*  
22 *[Petitioner's] relatives, Robert Sr. and Robert Jr., testified that they*  
23 *observed what appeared to be hickeys on [Petitioner's] neck on the*  
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26 <sup>4</sup> Forcible oral copulation and forcible sexual penetration require that the perpetrator  
27 accomplished the act by force, violence, duress, menace, or fear of immediate and unlawful bodily  
28 injury to another person. (1 CT at 213, 215). Unlawful oral copulation with a minor and unlawful  
sexual penetration of a minor do not have this requirement. See CALCRIM Nos. 1082, 1101,  
1102.

1       night of the crime, neither disclosed their observations when  
2       interviewed by law enforcement soon after the crime. Jane's father,  
3       who accosted [Petitioner] immediately after Jane's assault, did not  
4       observe any hickeys on [Petitioner]. [Petitioner's] parole officer, who  
5       met with [petitioner] the day after the crime, saw long, thin scratches  
6       on [Petitioner's] neck that did not resemble hickeys. [¶] Moreover,  
7       the jury's verdict on all five counts against [Petitioner] reflects a  
8       consensus that [Petitioner] acted forcibly in sexually assaulting Jane.  
9       By finding [Petitioner] guilty of the lesser included offenses of assault  
10      with intent to commit forcible rape and assault with intent to commit  
11      forcible oral copulation on counts 1 and 2, the jury necessarily found  
12      that when [Petitioner] acted, "he intended to commit forcible rape,  
13      forcible oral copulation and forcible sexual penetration." (CALCRIM  
14      No. 890.) The jury's true finding on the aggravated kidnapping  
15      allegation as to counts 3 through 5 (forcible oral copulation on a minor  
16      victim and sexual penetration by foreign object of a minor victim)  
17      similarly resolved the issue of force as to those counts.

18  
19 (Lodgment No. 7 at 15-16).

20       3.     Relevant Federal Law and Analysis.

21       Habeas relief is not warranted on Ground One for several reasons. First,  
22       claims of instructional error generally involve questions of state law and, as such,  
23       are not cognizable on federal habeas review. "In conducting habeas review, a federal  
24       court is limited to deciding whether a conviction violated the Constitution, laws or  
25       treaties of the United States." Estelle v. McGuire, 502 U.S. 62, 68 (1991); see also  
26       28 U.S.C. § 2254(a). Habeas relief is not available for an alleged error in the  
27       interpretation or application of state law. McGuire, 502 U.S. at 68.

28       ///

1 Next, to the extent that Petitioner asserts a federal due process violation  
2 arising from the trial court's failure to instruct on lesser included offenses, his claim  
3 fails because granting relief would require the application of a new rule of  
4 constitutional law in a habeas case. See Teague v. Lane, 489 U.S. 288, 299-301  
5 (1989). Under Teague, a new rule generally cannot be applied retroactively to cases  
6 on collateral review.<sup>5</sup> See Whorton v. Bockting, 549 U.S. 406, 416 (2007).

7 The United States Supreme Court has held that the failure to instruct on a  
8 lesser included offense in a capital case violates due process if there is evidence to  
9 support the instruction but has not extended that holding to non-capital cases. See  
10 Beck v. Alabama, 447 U.S. 625, 638 n.14 (1980) (declining to decide whether  
11 instructions on lesser included offenses are required in non-capital cases); see also  
12 United States v. Torres-Flores, 502 F.3d 885, 887 n.3 (9th Cir. 2007) (“Beck left  
13 open whether the due process right extends to defendants in noncapital cases”).  
14 Further, under Ninth Circuit law, “the failure of a state trial court to instruct on lesser  
15 included offenses in a non-capital case does not present a federal constitutional  
16 question.” Windham v. Merkle, 163 F.3d 1092, 1106 (9th Cir. 1998). Accordingly,  
17 to the extent Petitioner asserts that he had a federal constitutional right to have the  
18 trial court instruct on lesser included offenses, Teague bars relief. See Solis v.  
19 Garcia, 219 F.3d 922, 929 & n.7 (9th Cir. 2000) (holding that claim of instructional  
20 error for failing to give lesser included offense instruction in a noncapital case was  
21 barred by Teague).

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24  
25 <sup>5</sup> “[A] case announces a new rule when it “breaks new ground or imposes a new obligation  
26 on the States or the Federal Government” or “if the result was not dictated by precedent existing  
27 at the time the defendant’s conviction became final.” Teague, 489 U.S. at 301 (emphasis  
28 removed). The only exceptions to the Teague bar are for (1) rules that forbid criminal punishment  
of primary, individual conduct, and (2) “watershed” rules of criminal procedure. Id. at 311.  
Neither exception applies here.

1 Even if Petitioner's claim were not Teague-barred, it nevertheless would fail  
2 under AEDPA. Because no Supreme Court holding establishes a constitutional right  
3 to jury instructions on lesser included offenses in non-capital cases, it follows that  
4 the California Court of Appeal's decision rejecting Petitioner's claim cannot be  
5 contrary to, or an unreasonable application of, clearly established federal law. See  
6 Carey v. Musladin, 549 U.S. 70, 77 (2006) (concluding that, when Supreme Court  
7 precedent gives no clear answer to question presented, "it cannot be said that the  
8 state court 'unreasonab[ly] appli[ed] clearly established Federal law'"); see also  
9 Bortis v. Swarthout, 672 Fed. App'x 754 (9th Cir. 2017) (unpublished) ("There is  
10 no Supreme Court precedent establishing that a state trial court is required to instruct  
11 on lesser included offenses in noncapital cases.").

12 The Court notes, however, that if a trial court fails to instruct the jury on a  
13 defense theory that is legally sound and supported by the evidence, the Ninth Circuit  
14 has held that such failure deprives a criminal defendant of the constitutional right to  
15 present a complete defense. See Byrd v. Lewis, 566 F.3d 855, 860 (9th Cir. 2009);  
16 Bashor v. Risley, 730 F.2d 1228, 1240 (9th Cir. 1984) (noting that a "criminal  
17 defendant is . . . entitled to adequate instructions on his or her theory of defense").  
18 Even if the Court liberally construes petitioner's claim as stating a violation of his  
19 right to present a full defense, it still fails.

20 Instructional error that amounts to a constitutional violation does not justify  
21 habeas relief unless the error "had a substantial and injurious effect or influence on  
22 the jury's verdict." Calderon v. Coleman, 525 U.S. 141, 147 (1998); Brecht v.  
23 Abrahamson, 507 U.S. 619, 637 (1993). When a claim is based on the omission of  
24 an instruction, a petitioner's burden is "especially heavy," as the failure to give an  
25 instruction is less likely to be prejudicial than an affirmative misstatement of the law.  
26 Henderson v. Kibbe, 431 U.S. 145, 155 (1977).

27 ///  
28

1 Here, any error by the trial court in omitting the lesser-included offense  
2 instructions of nonforcible oral copulation and nonforcible sexual penetration was  
3 harmless, as the record contained substantial evidence that Petitioner forcibly  
4 assaulted the victim.<sup>6</sup> In particular, the victim's testimony established that Petitioner  
5 used force and duress by grabbing her arm, pushing her into the bathroom,  
6 threatening to kill her, shoving her against the bathroom wall, grabbing her head and  
7 forcing her to orally copulate him, and choking her while sexually penetrating her.  
8 (2 RT 625, 644-50, 654-56, 660-68, 684-87, 716-17). The evidence also showed  
9 that the victim had bruises and scratches on her body that were consistent with  
10 forcible sexual assault. (4 RT 1212-13, 1223-39, 1243-59, 1264-65).

11 On the other hand, the defense evidence of a consensual encounter was not  
12 convincing. Although Petitioner's uncle, Robert Sr., and cousin, Robert Jr., testified  
13 that after the incident they saw "hickeys" on Petitioner's neck that had not been there  
14 earlier that day, they did not share their observations with the police during their  
15 interviews following the incident. (6 RT 1930-31, 1957-59, 1963, 2006-12; 7 RT  
16 2144, 2166-71, 2177-78, 2295, 2303). And Petitioner's parole officer, Esmeralda  
17 Zamora, testified that on the day following the assault, Petitioner had long, thin  
18 scratches on his neck that did not appear to be hickeys. (5 RT 1592-93, 1602-04).

19 The Court of Appeal reasonably observed that the jury's guilty verdict on all  
20 five counts was consistent with a finding that Petitioner used force. The jury also  
21 found true the aggravated kidnapping allegation, which required proof that Petitioner  
22 detained and moved the victim against her will by using force or by instilling fear.  
23

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24  
25 <sup>6</sup> As mentioned above, the California Court of Appeal rejected Petitioner's claim based on  
26 the failure to instruct on unlawful intercourse with a minor, because that offense was not, as  
27 Petitioner urged, a lesser included offense of forcible rape. This Court is bound by the state court's  
28 interpretation of California law. See Bradshaw v. Richey, 546 U.S. 74, 76 (2005) (per curiam)  
("[A] state court's interpretation of state law, including one announced on direct appeal of the  
challenged conviction, binds a federal court sitting in habeas corpus").

1 (1 CT 220). On this record, the evidence did not support a defense theory that  
2 Petitioner committed the lesser offenses of nonforcible oral copulation and  
3 nonforcible sexual penetration. It follows that, had the trial court given instructions  
4 on such lesser included offenses, there is no reasonable probability that the jury  
5 would have reached a different verdict. Accordingly, the omission of the lesser-  
6 included offense instructions did not have a substantial and injurious effect on the  
7 jury's verdict. See Brecht, 507 U.S. at 637.

8 For these reasons, habeas relief is not warranted on Ground One.

9 **B. Petitioner's Claim Challenging the Trial Court's Denial of his Motion for**  
10 **New Trial is Not Cognizable and the Underlying *Brady* Claim Lacks**  
11 **Merit.**

12 In Ground Two, Petitioner asserts that the trial court erred in denying his  
13 motion for a new trial based on the prosecution's failure to disclose his cell phone  
14 that contained exculpatory photographic evidence. (Petition at 7). As Petitioner  
15 raised this claim in his direct appeal, the Court reviews the California Court of  
16 Appeal's reasoned denial under AEDPA standard. See Ylst, 501 U.S. at 803.

17 1. The State Court Proceedings.

18 After his conviction, Petitioner moved for a new trial, arguing that the  
19 prosecutor violated Brady v. Maryland, 373 U.S. 83, 87 (1963), by failing to turn  
20 over Petitioner's cell phone which an investigating police detective had seized  
21 during a search of Petitioner's residence. Petitioner asserted that the cell phone  
22 contained exculpatory evidence in the form of digital photographs showing hickeys  
23 on his neck on the day after the assault, which demonstrated that the incident was a  
24 consensual encounter. (2CT 294-309; 9RT 3927-37). Following a hearing on the  
25 motion, the trial court ruled against Petitioner, finding no Brady violation because  
26 the photographs were not "unknown to the defense." (2 CT 466-67; 9 RT 3920-61).

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28

1           Considering Petitioner's Brady claim on direct appeal, the California Court of  
2 Appeal summarized the pertinent trial court proceedings as follows:

3           *[Petitioner] filed a new trial motion on the ground that the*  
4 *prosecution failed to provide exculpatory evidence during discovery.*  
5 *He argued that Detective Vega had possession of [his] cell phone from*  
6 *September 16, 2013[,] to October 29, 2015, and the phone contained*  
7 *digital photographs taken the day after Jane's assault showing marks*  
8 *on [Petitioner's] neck that were consistent with hickeys, evidence of*  
9 *consensual sex. [Petitioner's] motion was supported by defense*  
10 *counsel's declaration, in which she attested to making several*  
11 *discovery requests, including specific requests for [Petitioner's] cell*  
12 *phone because she wanted to examine the phone for photographs.*  
13 *[Petitioner's] motion was also supported by a declaration from Dr.*  
14 *Ryan O'Conner, who opined that the marks on [Petitioner's] neck*  
15 *shown in the photographs were consistent with bruising from a*  
16 *"hickey." Dr. O'Conner's declaration further stated, however, that the*  
17 *marks on [Petitioner's] neck "could also represent abrasions, possibly*  
18 *fingernail scratches." The motion was also supported by a declaration*  
19 *from Lopez, [Petitioner's] then girlfriend, who stated that she used*  
20 *[Petitioner's] cell phone to take photographs of [Petitioner's] neck on*  
21 *September 8, 2013. Lopez further stated in her declaration that had*  
22 *she been shown the photographs at trial, "they would have refreshed*  
23 *my memory as to [Petitioner's] appearance, specifically the marks on*  
24 *his neck." [¶] The prosecutor opposed [Petitioner's] motion, arguing*  
25 *that the photographic evidence was not exculpatory but was consistent*  
26 *with testimony by Jane's father that he had physically attacked*  
27 *[Petitioner] after Jane disclosed the sexual assault, and with testimony*  
28

1 by [Petitioner's] parole officer that she saw scratches on [Petitioner's]  
2 neck that did not resemble hickeys. The prosecutor further argued the  
3 evidence was never suppressed because [Petitioner] knew the phone  
4 was in Detective Vega's possession but never disclosed the existence of  
5 any exculpatory photographs or requested that the photographs be  
6 retrieved. The prosecutor also submitted a declaration disputing  
7 defense counsel's claim that she had made a specific pretrial request  
8 for [Petitioner's] cell phone. In her declaration, the prosecutor stated  
9 that the first discussion she had with defense counsel concerning  
10 [Petitioner's] cell phone occurred on the date of [Petitioner's]  
11 sentencing hearing. [¶] At the hearing on [Petitioner's] motion, the  
12 trial court noted that even assuming the marks on [Petitioner's] neck  
13 were hickeys, "that doesn't necessarily equate to consent for a forcible  
14 sexual act." The court found the evidence was exculpatory but ruled  
15 that no Brady violation occurred because both sides were aware of its  
16 existence, including [Petitioner].

17 (Lodgment No. 7 at 29-31).

18  
19 In setting forth the applicable legal standard concerning a Brady analysis, the  
20 Court of Appeal observed that "where the defendant is aware of the essential facts  
21 enabling him to take advantage of any exculpatory evidence, the Government does  
22 not commit a Brady violation by not bringing the evidence to the attention of the  
23 defense." (Lodgment No. 7 (quoting Raley v. Ylst, 470 F.3d 792, 804 (9th Cir.  
24 2006)). Because Petitioner "was aware of the allegedly exculpatory evidence, as he  
25 posed for the photographs taken with his cell phone the day after he sexually  
26 assaulted [the victim]," the Court of Appeal found no Brady error. (Lodgment No.  
27 7 at 32). The Court of Appeal further reasoned that Petitioner "not only knew of the

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1 existence of the photographs taken with his own cell phone, but could also have  
2 obtained them with the exercise of reasonable diligence.” (Id. at 33).

3 2. Relevant Federal Law and Analysis.

4 Petitioner’s claim that the trial court erred in denying his motion for new trial  
5 is not cognizable on federal habeas review because it involves an issue of state law.  
6 “[I]t is not the province of a federal habeas court to reexamine state-court  
7 determinations on state-law questions.” See McGuire, 502 U.S. at 67-68 (noting  
8 that see also Schell v. Witek, 218 F.3d 1018, 1025 (9th Cir. 2000) (en banc) (noting  
9 that “not every state court abuse of discretion” amounts to a federal constitutional  
10 violation); Washington v. Horel, 2008 WL 4427221, at \*4 (C.D. Cal. Sept.30, 2008)  
11 (holding that a claim of abuse of discretion in denying new trial not cognizable in  
12 federal habeas proceedings). The Supreme Court has observed that “[t]he  
13 Constitution itself, of course, makes no mention of new trials.” Herrera v. Collins,  
14 506 U.S. 390, 408 (1993).

15 To the extent that Petitioner is also raising a claim of Brady error, his claim  
16 fails because the California Court of Appeal’s denial was not contrary to Supreme  
17 Court precedent. In Brady, the Supreme Court held that “the suppression by the  
18 prosecution of evidence favorable to an accused upon request violates due process  
19 where the evidence is material either to guilt or to punishment, irrespective of the  
20 good faith or bad faith of the prosecution.” 373 U.S. at 87. A Brady claim has three  
21 components: (1) The challenged evidence must be favorable to the accused, either  
22 exculpatory or impeaching; (2) the evidence must have been suppressed by the  
23 prosecution, either willfully or inadvertently; and (3) the suppression caused  
24 prejudice. Strickler v. Greene, 527 U.S. 263, 281–82 (1999).

25 Of relevance here, a Brady claim also requires a showing that “the prosecution  
26 had knowledge of material exculpatory evidence that was unknown to the defense.”  
27 Cooper v. Brown, 510 F.3d 870, 990 (9th Cir. 2007). As the California Court of  
28

1 Appeal determined, the prosecutor did not violate Brady because Petitioner had been  
2 aware of the photographic evidence on his cell phone since the day after the assault,  
3 when his girlfriend used his device to take the photographs. (2 CT at 296, 310, 348-  
4 49; 9 RT at 3920-22). Accordingly, since Petitioner “knew of the existence of the  
5 evidence, his counsel could have sought the documents through discovery.” Raley,  
6 470 F.3d at 804. Based on the foregoing, the Court of Appeal’s denial was not an  
7 unreasonable application of the Brady standard.

8 For these reasons, no habeas relief is warranted on Ground Two.

9 **C. Petitioner is Not Entitled to Habeas Relief on His Claim of Ineffective**  
10 **Assistance of Counsel in Ground Three.**

11 In Ground Three, Petitioner contends that the trial court’s denial of his motion  
12 for a new trial deprived him of his right to the effective assistance of counsel.  
13 (Petitioner at 8). Petitioner explains that “early in the case” he mentioned his cell  
14 phone to his attorney, but that his attorney failed to move to compel its production.  
15 (Id.).

16 On direct appeal, the California Court of Appeal rejected this claim in a  
17 reasoned decision.<sup>7</sup> Accordingly, the Court reviews whether the Court of Appeal’s  
18 denial was reasonable under AEDPA standard.

19  
20 1. The California Court of Appeal’s Opinion.

21 In its decision affirming the judgment, the California Court of Appeal set forth  
22 the relevant law on the Sixth Amendment right to the effective assistance of counsel,  
23 observing that under Strickland v. Washington, 466 U.S. 687, 696 (1984), Petitioner  
24 had the burden of showing that his trial counsel was inadequate and resulting  
25 prejudice. (Lodgment No. 7 at 33).

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26  
27 <sup>7</sup> Petitioner also raised this ineffective assistance of counsel claim in a habeas petition filed  
28 in the California Court of Appeal, and a subsequent petition for review in the California Supreme  
Court. Both courts issued summary denials.

1 The Court of Appeal set forth the pertinent facts:

2 *After the denial of [Petitioner's] new trial motion based on*  
3 *alleged Brady error, the trial court appointed new counsel for*  
4 *[Petitioner] to prepare a second new trial motion based on ineffective*  
5 *assistance of counsel. [Petitioner's] new counsel filed a motion for a*  
6 *new trial on June 18, 2019, alleging that previous counsel was*  
7 *ineffective for failing to file a timely discovery motion to compel*  
8 *production of [Petitioner's] cell phone. [¶] After hearing argument*  
9 *by counsel, the trial court denied the motion, finding that [Petitioner]*  
10 *suffered no prejudice because the jury was able to consider the*  
11 *evidence of hickeys on [Petitioner's] neck through witness testimony*  
12 *and other photographic evidence.*

13 (Lodgment No. 7 at 34).

14 Rejecting Petitioner's claim, the Court of Appeal found that Petitioner failed  
15 to establish inadequate performance or prejudice. (Lodgment No. 7 at 34). The  
16 Court of Appeal reasoned:

17 *The record shows that [Petitioner's] trial counsel knew that law*  
18 *enforcement had seized [Petitioner's] cell phone and that the phone*  
19 *may have contained relevant photographs. [Petitioner's] trial counsel*  
20 *submitted a declaration stating she had made multiple inquiries about*  
21 *the location of the phone. Counsel made a tactical decision to proceed*  
22 *to trial without the cell phone evidence. Counsel's tactical decision*  
23 *was a reasonable one, given the availability of direct witness testimony*  
24 *from Robert Sr. and Robert Jr. (People v. Lucas (1995) 12 Cal.4th 415,*  
25 *436-437 [courts defer to counsel's reasonable tactical decisions when*  
26 *reviewing ineffective assistance of counsel claims].) Both Robert Sr.*  
27 *and Robert Jr. testified that they observed [Petitioner's] neck before*  
28

1           *and after the crime, and that after Jane disclosed the assault and her*  
2           *father accosted [Petitioner], they saw discolored marks on*  
3           *[Petitioner's] neck that appeared to be hickeys. Robert Sr. and Robert*  
4           *Jr. were shown both a photograph and a diagram of [Petitioner's]*  
5           *neck. They indicated areas where they observed hickeys on*  
6           *[Petitioner's] neck. The photograph and diagram were admitted into*  
7           *evidence and available to the jury. [Petitioner] was not precluded from*  
8           *presenting evidence of hickeys on his neck or that the sexual encounter*  
9           *with Jane was consensual. He fails to establish that trial counsel's*  
10           *failure to obtain the cell phone evidence denied him effective assistance*  
11           *of counsel.*

12 (Lodgment No. 7 at 34-35).

13           2.     Relevant Law and Analysis.

14           Again, Petitioner's claim that the trial court erred in denying his motion for  
15 new trial is a matter of state law, and therefore is not cognizable in a federal habeas  
16 proceeding. For the reasons explained below, Petitioner's claim of ineffective  
17 assistance of counsel also fails.

18           Pursuant to Strickland, an ineffective assistance claim has two components:  
19 Deficient performance and prejudice. 466 U.S. at 687. Under the "deficient  
20 performance" prong, a petitioner must prove that counsel's representation fell below  
21 an objective standard of reasonableness by showing that "counsel made errors so  
22 serious that counsel was not functioning as the 'counsel' guaranteed the defendant  
23 by the Sixth Amendment." Id. at 687-88; Williams, 529 U.S. at 390-91. A reviewing  
24 court, however, "strongly presume[s] [that counsel] rendered adequate assistance  
25 and made all significant decisions in the exercise of reasonable professional  
26 judgment." Strickland, 466 U.S. at 690; Yarborough v. Gentry, 540 U.S. 1, 8 (2003)  
27 (per curiam). Only if counsel's acts and omissions, examined within the context of  
28

1 all the surrounding circumstances, were outside the “wide range” of professionally  
2 competent assistance, will the petitioner meet this initial burden. Kimmelman v.  
3 Morrison, 477 U.S. 365, 386 (1986); Strickland, 466 U.S. at 690.

4 Under the second prong of Strickland, the petitioner must show prejudice by  
5 demonstrating a reasonable probability that, but for counsel’s errors, the result would  
6 have been different. Strickland, 466 U.S. at 694. The errors must not merely  
7 undermine confidence in the outcome of the trial but must result in a proceeding that  
8 was fundamentally unfair. Williams, 529 U.S. at 393 n.17; Lockhart v. Fretwell,  
9 506 U.S. 364, 369 (1993).

10 The petitioner bears the burden of satisfying both prongs of the Strickland test.  
11 Strickland, 466 U.S. at 687; Cheney v. Washington, 614 F.3d 987, 995 (9th Cir.  
12 2010). A federal court, however, “need not determine whether counsel’s  
13 performance was deficient before examining the prejudice suffered by the defendant  
14 as a result of the alleged deficiencies. . . . If it is easier to dispose of an  
15 ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course  
16 should be followed.” Strickland, 466 U.S. at 697.

17 Additionally, a Strickland analysis under 28 U.S.C. § 2254(d) is highly  
18 deferential. Premo v. Moore, 562 U.S. 115, 122 (2011) (“The standards created by  
19 Strickland and § 2254(d) are both ‘highly deferential,’ and when the two apply in  
20 tandem, review is ‘doubly’ so.”) (citations omitted). On habeas review, the question  
21 “is not whether a federal court believes the state court’s determination under the  
22 Strickland standard was incorrect but whether that determination was  
23 unreasonable—a substantially higher threshold.” Knowles v. Mirzayance, 556 U.S.  
24 111, 123 (2009) (citation and internal quotations omitted). Additionally, the  
25 Strickland standard is a general one, so the range of reasonable applications is  
26 substantial. Premo, 562 U.S. at 123.

27  
28 ///

1           The California Court of Appeal's denial of Petitioner's claim was not an  
2 unreasonable application of the Strickland standard. During the trial, the prosecution  
3 introduced Petitioner's booking photographs that were taken on September 9, 2013,  
4 two days after the assault, as well as photographs of Petitioner taken by the police  
5 on September 10, 2013. Both Robert Sr. and Robert Jr. testified at length regarding  
6 the marks on Petitioner's neck that they believed were hickeys, and both witnesses  
7 were shown the prosecution's photographs as well as a diagram depicting the neck  
8 area of an individual. Using the photographs and diagram, Robert Sr. and Robert Jr.  
9 indicated the locations on Petitioner's neck where they observed the marks. The  
10 photograph and diagram were received into evidence. (6RT 1957-59, 2008-13,  
11 2025-26; 7RT 2111-14, 2201-06, 2210-11, 2295, 2301-02; 8 RT 2421-22).

12           The Court of Appeal reasonably determined that defense counsel made an  
13 appropriate strategic decision to proceed to trial without moving to compel  
14 production of the cell phone, as the defense was able to present evidence of  
15 Petitioner's hickeys through the direct witness testimony from Robert Sr. and Robert  
16 Jr. Moreover, the Court notes that in addition to being cumulative to the  
17 prosecution's photographic evidence, the cell phone photographs could have  
18 potentially undermined Petitioner's defense, as the defense expert who viewed them  
19 found that the marks on Petitioner's neck were not only consistent with bruising  
20 from a hickey, but were also consistent with "abrasions, possibly fingernail  
21 scratches." (2CT 308; Pet. Supp. Doc., "Declaration of Dr. Ryan O'Connor"). On  
22 this record, the Court of Appeal reasonably concluded that defense counsel's  
23 decision to forgo any discovery motion was a sound tactical decision that fell within  
24 the wide range of professionally competent assistance.  
25

26           Although the failure to show deficient performance is fatal to Petitioner's  
27 claim of ineffective assistance, the California Court of Appeal also reasonably  
28 concluded that Petitioner did not show Strickland prejudice. As the Court of Appeal

1 noted, Petitioner was not prevented from presenting other evidence of the hickeys or  
2 that the victim consented to the sexual encounter. Based on the testimony of Robert  
3 Sr. and Robert Jr., along with the prosecution's photographs and diagram, the jury  
4 could determine whether Petitioner's neck injuries were hickeys. Accordingly, had  
5 the cell phone photographs been admitted at trial, there is no reasonable probability  
6 that the jury would have decided the case differently—especially considering the  
7 strong evidence of Petitioner's guilt. As discussed in the Court's analysis of Ground  
8 One, the victim testified that Petitioner used force when assaulting her, and her  
9 injuries corroborated her testimony. The victim's testimony of Petitioner choking  
10 her was also consistent with the evidence of Petitioner's prior sexual assaults. (3 RT  
11 1038, 1046-52; 6 RT 1804, 1811-16). Given this evidence, Petitioner has failed to  
12 show any reasonable probability that the cell phone photographs would have  
13 affected the verdict.

14 Petitioner has not demonstrated that the Court of Appeal's decision "is so  
15 obviously wrong that its error lies 'beyond any possibility for fairminded  
16 disagreement.'" Shinn v. Kayer, 592 U.S. 111, 118 (2020) (per curiam) (quoting  
17 Richter, 562 U.S. at 103). Accordingly, Petitioner is not entitled to habeas relief on  
18 Ground Three.

19  
20 **D. Habeas Relief is Not Warranted on Ground Four.**

21 In Ground Four, Petitioner asserts that his rights to due process and to a fair  
22 trial were violated when a prosecution witness referred to him as a sex offender  
23 during the trial. (Petition at 10).

24 1. Background.

25 In a pre-trial proceeding, the trial court ruled that the following evidence was  
26 admissible: Petitioner's prior sex offenses (2 RT at 1, 11-13); Petitioner's prior  
27 conviction for forcible oral copulation (2 RT at A14-A16); and evidence that  
28 Petitioner was on parole and had a GPS ankle monitor (2 RT at 601-06). The trial

1 court ruled, however, that Petitioner's status as a registered sex offender could not  
2 be mentioned. (2 RT at 602, 606).

3 At trial, Zamora, Petitioner's parole officer, testified that she installed a GPS  
4 ankle monitor on Petitioner as part of his parole. (5 RT 1593). When the prosecutor  
5 asked how the ankle monitor worked, Zamora responded, "Once the sex offender is  
6 released from state prison --." (5 RT 1594).

7 Defense counsel objected and moved to strike the testimony. The trial court  
8 sustained the objection and instructed the jury, "[D]isregard that statement about sex  
9 offender. Give it no weight, disregard it and treat it as though you never heard it.  
10 We do not want to use that for any purpose." (5 RT at 1594-95).

11 Defense counsel subsequently moved for a mistrial based on Zamora's  
12 reference to Petitioner as a sex offender. (5 RT 1611-12). In denying the motion,  
13 the trial court determined that Petitioner's right to a fair trial was not violated  
14 because the jury was admonished to disregard the testimony. The trial court also  
15 noted that the prejudicial effect of the error was lessened because the prosecution  
16 intended to admit evidence of Petitioner's prior sex offenses. (5 RT 1612-14).

17  
18 2. Ground Four is Procedurally Barred.

19 As stated above, Petitioner presented this claim in habeas petitions filed  
20 sequentially in the Los Angeles County Superior Court, California Court of Appeal,  
21 and California Supreme Court. The California Supreme Court rejected the claim as  
22 barred under In re Dixon, 41 Cal.2d at 759, because the claim could have been, but  
23 was not, raised on appeal. (Lodgment No. 19).

24 The Court considers the California Supreme Court's Dixon denial as the last  
25 reasoned state court decision. See Curiel v. Miller, 830 F.3d 864, 870 (9th Cir. 2016)  
26 ("We have no cause to treat a state court's summary order with citations as anything  
27 but a 'reasoned' decision, provided that the state court's references reveal the basis  
28 for its decision."); see also Robinson v. Lewis, 9 Cal. 5th 883, 895-96 (2020)

1 (explaining that when a California court adjudicates an original habeas petition, the  
2 state court does not directly review a lower court's decision but instead "makes its  
3 own ruling"). Because the California Supreme Court's denial was based on a  
4 procedural ground and not on the merits, the Court addresses respondent's argument  
5 that Ground Four is procedurally barred. (See Answer at 24-25).

6 "Federal habeas courts generally refuse to hear claims 'defaulted . . . in state  
7 court pursuant to an independent and adequate state procedural rule.'" Johnson v.  
8 Lee, 578 U.S. 605, 606 (2016) (per curiam) (quoting Coleman v. Thompson, 501  
9 U.S. 722, 750 (1991)). In Johnson, the Supreme Court held that California's Dixon  
10 rule is well-established and regularly followed, and therefore adequate to bar federal  
11 habeas review. Johnson, 578 U.S. at 608-09.

12 Petitioner's claim in Ground Four is procedurally barred unless he can  
13 establish cause for the default and actual prejudice, or demonstrate that the failure to  
14 consider the claim will result in a fundamental miscarriage of justice. Coleman, 501  
15 U.S. at 750. Petitioner has failed to make any of these showings. As a result, Ground  
16 Four is procedurally defaulted.

17  
18 3. Even if Ground Four Were Not Procedurally Barred, it Still Fails.

19 Even if the Court were to consider the California Court of Appeal's summary  
20 denial of Petitioner's claim as the last reasoned state court decision, Petitioner's  
21 evidentiary challenge nevertheless fails under the "strict standards" of AEDPA. See  
22 Holley v. Yarborough, 568 F.3d 1091, 1101 (9th Cir. 2009).

23 The United States Supreme Court has issued "very few rulings regarding the  
24 admission of evidence as a violation of due process," and "has not yet made a clear  
25 ruling that admission of irrelevant or overtly prejudicial evidence constitutes a due  
26 process violation sufficient to warrant [habeas relief]." Holley, 568 F.3d at 1101;  
27 see also Walden v. Shinn, 990 F.3d 1183, 1204 (9th Cir. 2021) (noting Holley's  
28 holding "remains true" that no clearly established federal law addresses the

1 admission of unduly prejudicial evidence). Given the absence of controlling  
2 Supreme Court precedent, the California Supreme Court's denial of Petitioner's  
3 claim cannot be contrary to, or an unreasonable application of, clearly established  
4 federal law.

5 In any event, the fleeting reference to Petitioner's sex offender status did not  
6 have a "substantial and injurious effect or influence on the jury's verdict." Brecht,  
7 507 U.S. at 637. The jury was instructed to disregard the challenged testimony.  
8 Because Petitioner offers no reason to believe that the jury deviated from that  
9 instruction, the Court presumes that the jury followed the trial court's instruction.  
10 See Weeks v. Angelone, 528 U.S. 225, 234 (2000). And considering the evidence  
11 of Petitioner's prior sex offenses, his prior conviction for forcible oral copulation,  
12 and his parole status, as well as the evidence that Petitioner used force in assaulting  
13 the victim in the instant case, there is no reasonable likelihood that the reference to  
14 Petitioner's status as a sex offender influenced the verdict.

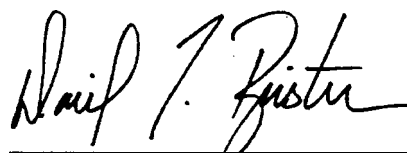
15 For the foregoing reasons, Petitioner is not entitled to habeas relief on Ground  
16 Four.

17  
18 V.

19 **RECOMMENDATION**

20 IT THEREFORE IS RECOMMENDED that the District Court issue an  
21 Order: (1) Approving and accepting this Report and Recommendation; and (2)  
22 directing that Judgment be entered denying the Petition and dismissing this action  
23 with prejudice.

24 Dated: February 11, 2025  
25 \_\_\_\_\_



26 DAVID T. BRISTOW  
27 United States Magistrate Judge  
28

**NOTICE**

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file Objections as provided in the Local Rules 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.

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# APPENDIX

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ANTHONY WILLIAM BEESON,  
  
Petitioner,  
  
v.  
  
DAVID HOLBROOK,  
  
Respondent.

Case No. 2:22-cv-08067-FMO (DTB)  
  
**ORDER ACCEPTING FINDINGS,  
CONCLUSIONS AND  
RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. Objections to the Report and Recommendation have been filed herein. Having made a *de novo* determination of those portions of the Report and Recommendation to which objections have been made, the Court concurs with and accepts the findings, conclusions and recommendations of the Magistrate Judge.

The Report recommends the denial of the Petition and the dismissal of this action with prejudice. (ECF No. 51.) Petitioner's objections to the Report (ECF No. 53) do not warrant a change to the Report's proposed findings or recommendations.

1           Petitioner objects that the prosecutor suppressed evidence that was favorable  
2 to the defense in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). (ECF No. 53  
3 at 2-14.) The allegedly favorable evidence consisted of photographs from  
4 Petitioner's own cell phone showing hickeys on Petitioner's neck, which allegedly  
5 would have demonstrated a consensual sexual encounter rather than a sexual  
6 assault. (*Id.* at 3.) The California Court of Appeal's denial of this claim was not  
7 objectively unreasonable. (ECF No. 39-16 at 31-33.) Because Petitioner was  
8 aware of this evidence from his own cell phone, it could not have been suppressed  
9 in violation of *Brady*. See *Raley v. Ylst*, 470 F.3d 792, 804 (9th Cir. 2006)  
10 (“[W]here the defendant is aware of the essential facts enabling him to take  
11 advantage of any exculpatory evidence, the Government does not commit a *Brady*  
12 violation by not bringing the evidence to the attention of the defense.”) (citations  
13 omitted); *Bush v. Muniz*, 2020 WL 6588393, at \*18 (C.D. Cal. July 31, 2020)  
14 (“Here, petitioner certainly possessed the salient facts surrounding his cell phone,  
15 and could have subpoenaed his own cell phone records.”).

16  
17           Petitioner further objects that the evidence from his cell phone was  
18 suppressed in violation of *Brady* because the defense could not have asked the trial  
19 court “to compel discovery based solely on the word of the accused, when the  
20 prosecution had indicated they have provided all the discovery.” (ECF No. 53 at 6,  
21 see also *id.* at 7-13.) To the contrary, “the word of the accused” would have been  
22 sufficient to alert defense counsel to the existence of the evidence, thereby  
23 defeating a *Brady* claim for failure to prove suppression. See *Raley*, 470 F.3d at  
24 804 (where “Petitioner possessed the salient facts regarding the existence of the  
25 records that he claims were withheld,” then “his counsel could have sought the  
26 documents through discovery”).

27           Petitioner objects that his defense counsel was ineffective in violation of  
28 *Strickland v. Washington*, 466 U.S. 687 (1984), for failing to obtain the

1 photographs of the hickeys on Petitioner's neck from Petitioner's cell phone. (ECF  
2 No. 53 at 14-15.) The California Court of Appeal's denial of this claim was not  
3 objectively unreasonable. (ECF No. 39-16 at 35-36.) Counsel made a reasonable  
4 tactical decision to proceed to trial without the cell phone evidence, and there was  
5 no reasonable probability that the decision affected the outcome of the trial. The  
6 jury heard evidence from other sources about the hickeys: two eyewitnesses  
7 testified about discolored marks on Petitioner's neck that appeared to be hickeys,  
8 and a photograph and a diagram of Petitioner's neck were admitted into evidence.  
9 (*Id.*)

10 IT THEREFORE IS ORDERED that Judgment be entered denying the  
11 Petition and dismissing this action with prejudice.

12 Dated: April 2, 2025

13 \_\_\_\_\_/s/\_\_\_\_\_  
14 FERNANDO M. OLGUIN  
15 United States District Judge  
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