APPENDIX C

FILED

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON CHUNGCHIEN YU,

Plaintiff - Appellant,

v.

NEIL MCDOWELL, as Acting Warden, Ironwood State Prison,

Defendant - Appellee.

No. 25-7878

D.C. No. 5:22-cv-01040-FWS-DTB
Central District of California,
Riverside

ORDER

Before: VANDYKE and DE ALBA, Circuit Judges.

The request for a certificate of appealability 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

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

JASON CHUNGCHIEN YU,

Petitioner,

v.

NEIL MCDOWELL, AS ACTING WARDEN, IRONWOOD STATE PRISON,

Respondant.

Case No. 5:22-cv-01040-FWS-DTB

ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE [49] AND OVERRULING OBJECTIONS [51]

I. Introduction and Relevant Procedural History

Before the court is the Magistrate Judge's September 24, 2025, Report and Recommendation. (Dkt. 49 ("Report and Recommendation" or "R&R").) Based on the state of the record, as applied to the applicable law, the court **ADOPTS** the Report and Recommendation issued by the Magistrate Judge, including each of the findings of fact and conclusions of law therein.

In summary, on June 27, 2022, Petitioner Jason Chungchien Yu ("Petitioner") filed a Petition for Writ of Habeas Corpus by a Person in State Custody under 28 U.S.C. § 2254. (Dkt. 1.) On that same date, Petitioner filed a Motion for a *Kelly* Stay, pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003), that requested "to hold his federal petition in abeyance while he exhausts remaining available remedies in state court." (Dkt. 2 ("Motion for *Kelly* Stay").) On July 21, 2022, the Magistrate Judge granted the Motion for a *Kelly* Stay, imposed a *Kelly* stay, and included an order requiring periodic status reports. (Dkt. 5.) On July 28, 2025, Petitioner filed an Amended Petition. (Dkt. 6.) From August 15, 2022, to June 25, 2024, seventeen status reports were filed. (Dkts. 7-17, 19-24.)

On June 26, 2024, the Magistrate Judge vacated the *Kelly* stay. (Dkt. 25.) On July 11, 2024, Petitioner filed the Second Amended Petition. (Dkt. 26. ("SAP" or the "Petition").) On August 27, 2024, Respondent Neil McDowell ("Respondent") filed a Motion to Dismiss the SAP, (Dkts. 30-31 ("MTD")), that Petitioner opposed on September 19, 2025, (Dkt. 33). On January 27, 2025, the court granted in part and denied in part the MTD. (Dkt. 37.)

On March 10, 2025, Respondent filed the Answer to the Petition. (Dkt. 41 ("Answer").) On April 1, 2025, Petitioner filed the Reply/Traverse to the Answer. (Dkt. 45 ("Reply").) On September 24, 2025, the Magistrate Judge issued the Report and Recommendation. (Dkt. 49.) On October 8, 2025, Petitioner objected to the Report and Recommendation. (Dkt. 51 ("Objections").)

II. Discussion

"A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3) (stating "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to," and "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the

magistrate judge with instructions"). Proper objections require "specific written objections to the proposed findings and recommendations" of the magistrate judge. Fed. R. Civ. P. 72(b)(2). "A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) ("The statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise."). Where no objection has been made, arguments challenging a finding are deemed waived. *See* 28 U.S.C. § 636(b)(1)(C) ("Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court."). Moreover, "[o]bjections to a R&R are not a vehicle to relitigate the same arguments carefully considered and rejected by the Magistrate Judge." *Chith v. Haynes*, 2021 WL 4744596, at *1 (W.D. Wash. Oct. 12, 2021).

Here, in the Report and Recommendation, the Magistrate Judge recommended that the court issue an order:

> (1) Approving and accepting this Report and Recommendation; and (2) directing that Judgment be entered denying the Petition and dismissing this action with prejudice.

(R&R at 53.)

In the Objections, Petitioner argues that Habeas Relief is warranted on grounds one through four. (*See generally* Petition.) Petitioner asserts that he "has demonstrated that his Constitutional rights under the Sixth and Fourteenth Amendments were violated," and accordingly, the court "should grant the within writ and release Petitioner." (*Id.* at 10.)

After conducting a de novo review of the Objections, the court agrees with each of the findings of fact and conclusions of law set forth in the Report and Recommendation, including each of the recommendations contained therein.

Accordingly, Petitioner's arguments set forth in the Objections are **OVERRULED** on the merits.

In sum, pursuant to 28 U.S.C. § 636, the court has reviewed and considered the files and records of the case, including the Report and Recommendation, the Petition, the Answer, the Reply, the Objections, and the other records of the case. After conducting a de novo review of the Objections, the court concurs with and accepts the findings and conclusions of the Magistrate Judge in the Report and Recommendation.

III. Conclusion

Based on the state of the record, as applied to the applicable law, the court concurs with and accepts the findings, conclusions and recommendations of the Magistrate Judge in the Report and Recommendation. Accordingly, the court **ORDERS** that Judgment is entered **DENYING** the Petition and **DISMISSING** this action **WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 17, 2025

Hon. Fred W. Slaughter
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

JASON CHUNGCHIEN YU,

Petitioner,

v.

NEIL McDOWELL, as Acting Warden, Ironwood State Prison,

Respondent.

Case No. 5:22-cv-01040-FWS (DTB)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Fred W. Slaughter, 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 June 27, 2022, Petitioner Jason Chungchien Yu ("Petitioner"), represented by counsel, filed a Petition for Writ of Habeas Corpus by a Person in State Custody under 28 U.S.C. § 2254 ("Petition"), accompanied by a supporting Memorandum of Points and Authorities ("Petition Mem."), alleging six claims related to Petitioner's

convictions in Los Angeles County Superior Court, case number BA457678. (Docket No. 1).[1] On the same date, Petitioner filed a Motion for a Stay under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), overruled on other grounds by Robbins v. Carey, 481 F.3d 1143, 1149 (9th Cir. 2007), requesting that the Petition be stayed in order for him to exhaust his ineffective assistance of counsel claim (Ground Five) and his actual innocence claim (Ground Six) in state court. (Docket No. 2).[2] On July 21, 2022, the previously-assigned Magistrate Judge granted the Motion for a Stay, ordered Petitioner to file a First Amended Petition deleting Grounds Five and Six, which would result in the case being stayed and the First Amended Petition being held in abeyance while Petitioner returned to state court to exhaust Grounds Five and Six, and ordered Petitioner to file a Second Amended Petition containing all exhausted claims within thirty days of the California Supreme Court's denial of Petitioner's habeas petition (assuming denial). (Docket No. 5).

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[1] The Petition alleged the following grounds for relief: (1) The trial court refused to grant adjournment, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments; (2) The trial court refused to grant Petitioner time to hire a new attorney, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments; (3) The trial court admitted evidence of uncharged sexual offenses, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments; (4) The prosecution did not present sufficient evidence to sustain the convictions, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments; (5) Petitioner's trial counsel was ineffective in various respects, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments; and (6) Petitioner is actually innocent of the offenses of which he was convicted and therefore was denied his right to due process under the Fifth, Sixth, and Fourteenth Amendments. (Petition at 19-22; Petition Mem. at 16-66).

[2] Under the Kelly procedure, "(1) a petitioner amends his petition to delete any unexhausted claims; (2) the court stays and holds in abeyance the amended, fully exhausted petition, allowing the petitioner the opportunity to proceed to state court to exhaust the deleted claims; and (3) the petitioner later amends his petition and re-attaches the newly-exhausted claims to the original petition." King v. Ryan, 564 F.3d 1133, 1134 (9th Cir. 2009) (citation omitted).

On July 28, 2022, Petitioner filed a First Amended Petition for Writ of Habeas Corpus by a Person in State Custody ("FAP"), alleging Grounds One through Four of the Petition and deleting Grounds Five and Six of the Petition. (Docket No. 6).

On June 28, 2022 (prior to the previously assigned Magistrate Judge's July 21, 2022 Order), Petitioner filed a petition for writ of habeas corpus in the Los Angeles County Superior Court. (Respondent's Notice of Lodgment ["Lodgment"] No. 5 at 76-135[3] [Docket No. 31]). On August 17, 2023, the Superior Court denied that habeas petition. (Lodgment No. 5 at 298-312).

On October 16, 2023, Petitioner filed a petition for writ of habeas corpus in the California Court of Appeal. (Lodgment No. 5 at 314-403). On November 3, 2023, the Court of Appeal denied that habeas petition. (Lodgment No. 5 at 405).

On January 29, 2024, Petitioner filed a petition for writ of habeas corpus in the California Supreme Court. (Lodgment No. 5). On June 12, 2024, the California Supreme Court summarily denied that habeas petition. (Lodgment No. 6).[4]

On June 26, 2024, based on Petitioner's statement in a status report that the California Supreme Court had filed an Order denying his habeas petition and that Petitioner will file a Second Amended Petition by July 12, 2024 (see Docket No. 24 at 3), the Court vacated the stay. (Docket No. 25).[5]

On July 11, 2024, Petitioner filed a Second Amended Petition for Writ of Habeas Corpus by a Person in State Custody ("SAP"), accompanied by a supporting Memorandum of Points and Authorities ("SAP Mem."), alleging six claims. (Docket No. 26).

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[3] For the parties' pleadings and lodged documents (except for transcripts), the Court cites to the CM/ECF pagination at the top of each page.

[4] Neither party has provided the Court with a copy of the California Supreme Court's Order denying that habeas petition.

[5] The case was transferred to this Court's calendar on November 22, 2023. (Docket No. 18).

On August 27, 2024, Respondent filed a Motion to Dismiss the SAP ("Motion to Dismiss"), asserting that Grounds One and Three of the SAP are unexhausted and that Grounds Five and Six of the SAP are untimely. (Docket No. 30). On September 19, 2024, Petitioner filed an Opposition to the Motion to Dismiss. (Docket No. 33).

On December 12, 2024, the Court issued a Report and Recommendation, recommending that the Motion to Dismiss be granted in part and denied in part. (Docket No. 34). Finding that that Grounds One and Three of the SAP are exhausted and that Grounds Five and Six of the SAP are untimely, the Court recommended dismissal of Grounds Five and Six of the SAP with prejudice and without leave to amend. (Id.).

On January 27, 2025 (following the December 26, 204 filing of Petitioner's Objections, see Docket No. 36), the district court adopted the Report and Recommendation and granted in part and denied in part the Motion to Dismiss and dismissed Grounds Five and Six of the SAP with prejudice and without leave to amend. (Docket No. 37).

On March 10, 2025 (in accordance with the district court's January 27, 2025 Order, see Docket No. 37 at 4, and after receiving an extension of time, see Docket No. 39), Respondent filed an Answer to the SAP ("Answer"). (Docket No. 41). On April 1, 2025, Petitioner filed a Traverse to the Answer ("Traverse") (Docket No. 45) accompanied by a supporting Memorandum of Points and Authorities ("Traverse Mem.") (Docket No. 45-1).

This matter is now ready for decision. For the reasons discussed below, the Court recommends that the SAP be denied and that this action be dismissed with prejudice.

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II.

PROCEDURAL HISTORY

On May 23, 2019, a Los Angeles County Superior Court jury found Petitioner guilty of three counts of sodomy by force in violation of Cal. Penal Code § 286(c)(2)(A) (Counts 1, 6, and 11), one count of forcible oral copulation in violation of former Cal. Penal Code § 288a(c)(2)(A) (Count 2), two counts of assault with intent to commit rape, sodomy, and oral copulation in violation of Cal. Penal Code § 220(a)(1) (Counts 3 and 7), two counts of false imprisonment by violence in violation of Cal. Penal Code § 236 (Counts 4 and 8), one count of kidnapping to commit rape in violation of Cal. Penal Code § 209(b)(1) (Count 5), one count of criminal threats in violation of Cal. Penal Code § 422(a) (Count 9), one count of kidnapping to commit sodomy in violation of Cal. Penal Code § 209(b)(1) (Count 10), and one count of forcible rape in violation of Cal. Penal Code § 261 (Count 12). (2 Clerk's Transcript ["CT"] 362-73, 389-93; 4 Reporter's Transcript ["RT"] 2108-12 [Docket Nos. 42-1 through 42-8]). In addition, the jury found true the following special allegations: As to counts 11 and 12, that Petitioner kidnapped the victim in violation of Cal. Penal Code §§ 207, 209, or 209.5 within the meaning of Cal. Penal Code §§ 667.61(b) and (e)(1), and that Petitioner's movement of the victim substantially increased the risk of harm to her within the meaning of Cal. Penal Code §§ 667.61(a) and (d)(2); and as to counts 1, 6, 11, and 12, that Petitioner committed an offense specified in Cal. Penal Code § 667.61(c) against more than one victim within the meaning of Cal. Penal Code §§ 667.61(b) and (e)(4)). (2 CT 372-74, 392-93; 4 RT 2112-13, 2115). On June 26, 2019, after denying Petitioner's motion for a new trial (2 CT 408; 4 RT 2402-03), the trial court sentenced Petitioner to state prison for a determinate term of 8 years and a consecutive indeterminate term of life plus 80 years to life. (2 CT 409-12, 414-17; 4 RT 2405-08).

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Petitioner appealed his conviction and sentence to the California Court of Appeal. (Lodgment No. 1). In an unpublished decision issued on January 7, 2021, the Court of Appeal affirmed the judgment. (Lodgment No. 2).

On February 16, 2021, Petitioner filed a Petition for Review in the California Supreme Court. (Lodgment No. 3). On March 30, 2021, the California Supreme Court summarily denied the Petition for Review. (Lodgment No. 4).

As noted above, Petitioner filed the Petition on June 27, 2022 (Docket No. 1) and the FAP (with the two deleted claims) on July 21, 2022 (Docket No. 6).

As noted above, Petitioner filed three state habeas petitions after the Petition was filed. On June 28, 2022, Petitioner filed a habeas petition in the Los Angeles County Superior Court, which was denied on August 17, 2023. (Lodgment No. 5 at 76-135, 298-312). On October 16, 2023, Petitioner filed a habeas petition in the California Court of Appeal, which was denied on November 3, 2023. (Lodgment No. 5 at 314-403, 405). On January 29, 2024, Petitioner filed a habeas petition in the California Supreme Court, which was summarily denied on June 12, 2024. (Lodgment Nos. 5-6).

On July 21, 2024 (following the Court's vacating of the stay, see Docket No. 25), Petitioner filed the SAP. (Docket No. 26).

III.

SUMMARY OF THE EVIDENCE PRESENTED AT TRIAL

The Court adopts the following factual summary set forth in the California Court of Appeal's Opinion affirming his conviction. (Lodgment No. 2 at 3-18; renumbered footnotes in original).[6] To the extent that the Court's analysis of

[6] On habeas review, a district court "presume[s] that the state court's findings of fact are correct unless [the] [p]etitioner rebuts that presumption with clear and convincing evidence." Tilcock v. Budge, 538 F.3d 1138, 1141 (9th Cir. 2008) (citations omitted); 28 U.S.C. § 2254(e)(1).

Petitioner's claims depends on an examination of the trial record, however, the Court herein has made an independent evaluation of the record specific to those claims.

Mariana V. (Counts 1-4)

Mariana, who was 60 years old at the time of the crimes, had 12 prior convictions for prostitution, and sometimes worked as a prostitute, but she was not working on the night of April 21, 2017. She was on a street that was known for being a place to meet men and do drugs, when [Petitioner] stopped in front of her in a nice BMW. He asked if she wanted to party, which she understood to mean "go someplace, maybe sit around, conversation, food," as well as use drugs. She was hungry and hypoglycemic, so she got into [Petitioner]'s car.

As they drove around, Mariana told [Petitioner] she was hungry. He asked if she liked to get high, and she said yes. Mariana pointed out several places to eat as they drove, but [Petitioner] did not stop. He said he wanted to take her to a nice hotel. They went to a motel, and Mariana asked if they could get food and cigarettes. [Petitioner] said they could use the phone in the room, so they went to the room. He gave her $50 for food.

[Petitioner] told Mariana to sit on the bed, so she did. His manner changed suddenly, and he pushed her down onto the bed "real hard." He put his arm around her, and she told him to slow down. He then said, "Shut up, bitch." Mariana started screaming. [Petitioner] mocked her and tried to tear her clothes. Mariana was wearing an expensive

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Because Petitioner has not rebutted the presumption of correctness, the Court relies on the state court's factual summary. See Tilcock, 538 F.3d at 1141.

skirt, and she was afraid [Petitioner] would damage it, so she offered to take it off. Instead, [Petitioner] pulled it up to her waist.

[Petitioner] tried to penetrate Mariana's anus with his penis. She told him to stop. He was unable to penetrate her. He pulled out a pipe and smoked it. He said, "Whoa, I'm really horny now." He tried to penetrate her anus about five times, but was unable to. She repeatedly told him to stop. Eventually [Petitioner] penetrated her, and it was "very painful."

At some point, Mariana pushed [Petitioner] away, and ran for the door. [Petitioner] pushed a table in front of the door and jumped on top of it. He acted nice again and said, "Come on. How come you're trying to get away?"

[Petitioner] tried to put his penis in Mariana's mouth, but she fought him. He did not get it inside, but it touched her lips. He put a washcloth in her mouth, and she pulled it out. He put his hands around her neck and choked her. She pushed him away. He put a belt around her neck and tightened it. She put her hand between her neck and the belt to prevent him from strangling her.

Mariana told [Petitioner] she had to pee and got up. [Petitioner] jumped off the bed and tried to stop her, but she went into the restroom and locked the door. [Petitioner] tried to get in, but she kept the door locked.

Another guest at the motel heard arguing for about 10 to 15 minutes and called 911. He heard a woman yelling: "Help. Call 911. I'm getting raped."

Los Angeles County Sheriff's Deputy Andrew Morse responded to the scene in the early morning hours of April 22, 2017. He heard a

woman inside a room saying, "Help." He got a key from the manager and entered the room. The woman had locked herself in the restroom. She looked frazzled and relieved to see the deputies. Deputy Morse noticed an empty jar of Vaseline on the nightstand. Mariana told the deputies what happened, and they transported her to the hospital.

Deputy Morse got a copy of [Petitioner]'s identification from the motel manager as the person who rented the room. [Petitioner] was not in the room or in the motel.

Nurse Carolyn Clark conducted a Sexual Assault Response Team (SART) examination. The nurse described Mariana as petite and disheveled—her makeup was running down her face and her hair was messy. Mariana told the nurse that [Petitioner] used Vaseline and put his mouth on her anus. The examination revealed no injuries to Mariana's anus. Her vagina, near the urethra, was red and possibly bruised. Inside her mouth, her left cheek had small, red abrasions. The findings were consistent with Mariana's report of what happened. Mariana told the nurse that [Petitioner] had put a pillow over her face, causing her to urinate. The nurse later testified that when a person is deprived of oxygen, even for 15 seconds, it can cause a loss of bladder control.

DNA from Mariana's left breast contained a mixture of three people's DNA, with [Petitioner] as the major contributor; no conclusions could be drawn about the minor contributors. DNA from her right breast was a mixture, with [Petitioner] as a possible contributor.

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Airam H. (Count 5)

Around 9:00 p.m. on February 26, 2012, 24-year-old Airam was waiting for the bus in El Monte to go to work as a food packer. She was running late and had just missed her bus. [Petitioner] pulled up in a black Mercedes and asked if she wanted a ride. She declined, and [Petitioner] said, "Don't be scared. I'm not going to do nothing to you." He said his name was Jason and told her he would take her where she needed to go. She noticed a suit in his backseat, which made her think he was on his way home from work. He seemed honest.

Airam got in the car and gave [Petitioner] her work address. As they were driving, [Petitioner] put his hand on her breast over her clothes. She removed it and asked him "if he could please not do that." He looked angry. Instead of turning right to get on the freeway toward her work, [Petitioner] turned left. Airam repeatedly told him to stop the car, but he did not. She did not know where they were.

They talked in the car. [Petitioner] told Airam she had a beautiful body. He said he was surprised she had two children. He told her he wanted to put his mouth on her vagina. She was upset and uncomfortable and told [Petitioner] she wanted to leave. He told her to think about her kids because she was all they had. He told her she could give him a lap dance instead of going to work. She did not know what a lap dance was. She kissed him to get it over with and asked, "That's what you want?" He asked why she insisted on going to work when she could make more money with him. He put about $150 in her hand. She threw it back at him. He put it back in her hand.

[Petitioner] stopped at a motel and went to the office. Airam tried to open the car door but could not. She was nervous. [Petitioner]

returned and said they could go to the room, but Airam said, "I am not going to the room." He got upset because he had already rented the room. When she refused to go with him, he grabbed her phone and went into the room. She followed him but did not go inside. She was desperate to get the phone back because it had pictures of her children, and she had texted her address to a friend.

Airam threw the money at [Petitioner] and said, "I just want my phone." He said, "Come and get it." He threw the money back at her, and she picked it up. She was going to put it under his windshield wiper, but he walked toward her, so she ran away.

Airam felt ashamed and stupid for accepting the ride. Her coworker encouraged her to call the police, and her supervisor drove her to the police station the next day. She had reported a previous incident to the police, but they did not do anything. To ensure the police helped her this time, she lied and told them [Petitioner] had grabbed her and pushed her into his car.

On February 28, 2012, El Monte Police Officer Gerardo Cueva located [Petitioner] in a room at the Siesta Motel. [Petitioner] identified his car, which was a 2008 BMW. Officer Cueva recovered Airam's cell phone from [Petitioner]. [Petitioner] admitted it belonged to a woman.

El Monte Police Detective Jeff Girgle interviewed [Petitioner] on February 28, 2012. [Petitioner] drove a BMW and admitted picking up a woman at a bus stop because "[h]e wanted to spend some time with somebody." His intention was not specific to sexual intercourse. He said the woman he picked up was not a prostitute; she was more of a "working girl" because she had two children. Unprompted, he said that

he did not kidnap her or point a gun at her. He said he was a Christian and would not have sex with someone he picked up.

[Petitioner] said they drove around El Monte until he pulled into a trailer park to buy methamphetamine. He then drove to a motel on Garvey Avenue. It was a mile or two from the bus stop where [Petitioner] picked up Airam. [Petitioner] said that he offered Airam $120 to compensate her since he did not let her go to work, and she took it. He was upset that she did not stay and have sex with him even though he gave her money.

Eva E. (Counts 6-9)

Eva met [Petitioner] through a mutual friend a week prior to the assault. He seemed nice. They spoke on the phone and exchanged messages. She never had sex with him or sent him a sexual message. On the evening of March 31, 2016, Eva called [Petitioner] and asked him to take her to a friend's house because she did not have a place to stay. He offered to get her a motel room and said he would "just chill with [her] for a little bit" and then leave. He picked her up; he had a nice car, but it broke down a short distance from the motel.

Once inside the motel room, [Petitioner] and Eva smoked crystal meth.[7] [Petitioner] gave her $20, and she walked to 7-11 to buy lottery scratchers. When she returned, [Petitioner] lay on the bed and told Eva to "come lay down with [him]." She declined. He offered her money to have sex with him. He showed her about $200, but she said, "No."[8]

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[7] Eva was a recovering drug addict [] but had not taken drugs for two years at the time of trial.

[8] Eva testified that she had never worked as a prostitute, but she told Los Angeles County Sheriff's Detective Jonathan Bailey that she had previously.

[Petitioner] told Eva he was "going to have his way" whether she took the money or not. She "felt like [she] was in big trouble."

[Petitioner] pulled out his penis and told Eva to play with it. He stroked himself and put on a condom. She was uncomfortable and said she wanted to leave. She went to the door and started unlocking the four locks, but [Petitioner] pulled her away.

Eva had almost gotten the door open when [Petitioner] grabbed her throat and choked her. She pulled pepper spray from her bra and sprayed his eyes and penis. He said, "I can't believe you did this to me, bitch." She hit him in the head with the room phone. [Petitioner] threw her onto the bed on her stomach and put his full weight on her. He choked her with his left arm around her neck. He pulled down her pants and put his penis in her vagina and her anus. She was in a lot of pain and thought he was going to kill her. She repeatedly told him to stop and tried to fight back.

[Petitioner] stopped, and said, "[I]t burns, it burns. I can't believe you did this. I'm going to kill you." She believed him because of the look on his face and the way that he had been choking her. She told him to put water on the areas to ease the pain because she had heard that water would make the pepper spray hurt more. He went to the restroom, and Eva grabbed her phone and called 911. She unlocked the door, and [Petitioner] ran from the restroom to try to stop her from leaving. Eva got out of the room and ran to a church across the street.

On April 1, 2016, at about 9:53 a.m., Monterey Park Police Officer Vincent Vasquez responded to the 911 call. He found Eva at the church across from the motel. She was

crying and rubbing her eyes. She appeared frantic and anxious. She would stop talking and "winc[e] in pain while holding her face." Eva described her attacker, and Officer Vasquez located [Petitioner] in the motel.

[Petitioner] let the officer into the room. Officer Vasquez noticed redness on both sides of [Petitioner]'s head and above his left eyebrow. He had an orange-colored stain on his face. His shirt also had orange stains. His arm had bite marks, and the back of his head was scratched. The room looked and smelled like a lot of pepper spray had been discharged. Pepper spray stains were on the headboard and a lamp. There was money in the room, and a condom in the trash can. There was a pepper spray can near a container of Vaseline.

Photographs showed redness around Eva's neck, and a bite mark on her right shoulder. Her right arm was red where [Petitioner] had squeezed and held her. Her right leg was bruised.

Nurse Marcellina Johnson conducted a SART examination of Eva. Eva was crying and appeared to be sad, dejected, and upset. She had abrasions and bruises on her body, as well as a bite mark on her shoulder. Bruising and abrasions on her anus indicated anal penetration. A swab of the interior of a condom from the motel room contained a mixture of at least three contributors, including Eva as the major contributor. The exterior was a mixture of

at least three contributors, with [Petitioner]'s and Eva's profiles included as possible contributors.

Monterey Park Detective Denise Ferrari processed [Petitioner]'s BMW. Pills that appeared to come from a box of Rhino Stamina Erection pills were scattered on the floorboard throughout the car. A glass pipe was located under the steering column.

Eva remained scared of [Petitioner] at the time of trial. She was afraid he would kill her if he was released. She did not know anyone named Airam or Maritza.

Maritza M. (Counts 10-12)

On January 29, 2017, at about 6:00 p.m., Maritza was walking home when [Petitioner] stopped his car next to her and rolled down his window. It was getting dark. [Petitioner] pulled out his wallet and said, "Look, money. A lot of money." Maritza believed [Petitioner] mistook her for a prostitute, and she said "No, thank you." She continued walking, and [Petitioner]'s car slowly followed. He repeatedly offered her money, and she said, "No, thank you. No, thank you. No, thank you."

After about 20 minutes, [Petitioner] got out of his car and grabbed Maritza. He buckled her into the front seat and "locked everything." She tried opening the car doors but could not. She pleaded with [Petitioner] repeatedly and said she had a daughter at home waiting for her. She showed him a photograph of her daughter. He said, "Shut up. Shut up." [Petitioner] turned around and drove to a dark, isolated area where he parked. Maritza did not know where they were.

[Petitioner] got out, opened Maritza's door, and pulled her out of the car. She did not speak English, but she repeatedly asked him to let her go in Spanish. [Petitioner] put her in the back seat and grabbed her breasts and buttocks. Maritza showed [Petitioner] her phone, but he grabbed it and threw it outside the car. [Petitioner] removed Maritza's shoes and pants, as well as his own pants. She repeated "No, no, please," but he continued. [Petitioner] penetrated Maritza's vagina with his penis. He turned her over and penetrated her anus. He had a "very big thing," and her anus burned and bled. She felt desperate and thought she was going to die.

When [Petitioner] was finished, he got dressed and left Maritza there, "undressed and hurt and in pain." She was crying. She got dressed, and walked until she saw a woman who told her which way Garvey Street was. The woman asked what happened, but Maritza did not want to tell her. Maritza "walked and walked until [she] reached Garvey." She did not have money, but she got on a bus and asked the driver to let her ride for free. She was crying, and the driver saw "the way [she] looked" and let her on the bus. She had trouble walking because her private parts were burning.

Maritza got home very late. She was still crying and took a bath to try to ease the burning sensation. Her daughter, who was 17 years old, asked what had happened and why she was so late, and Maritza told her. Her daughter called Maritza's son. Maritza's son took her to the Los Angeles County Sheriff's Station where Deputy Victor Benavidez spoke to

her. She was crying continuously and appeared sad, like she had just been through a traumatic experience. Deputy Benavidez and his partner took Maritza to the San Gabriel Medical Center for a SART examination. Later, Maritza did not remember the examination or speaking to the police. She was not "in [her] right mind at [the] time."

Registered Nurse Cassandre Walsh examined Maritza on January 30, 2017. Maritza was "very tearful throughout [the] interview." She had bruising on her left wrist, left thigh and knee, and right knee. She had multiple lacerations on her anus and perineum. The tears were caused by blunt force trauma. When Nurse Walsh attempted to further examine the area with dye on a cotton swab, the procedure was too painful for Maritza to complete. A few days later, Maritza had blisters around the left side of her waist.

Maritza's underwear tested positive for the presence of semen and blood. DNA from a sample on the underwear was a mixture of Maritza and [Petitioner].

Los Angeles County Sheriff's Detective Liliana Jara interviewed Maritza in her home. It was apparent that Maritza was in severe pain when she tried to walk. Maritza said that she would not have gotten "involved with a Chinese man." Maritza was able to describe her assailant, so Detective Jara arranged for a sketch artist to draw a sketch. Later, Maritza did not remember meeting with the sketch artist, but she recognized the individual in the sketch as her attacker.

On May 3, 2017, Maritza viewed a "six-pack" photographic lineup, but she was unable to identify [Petitioner]'s photograph. On May 30, 2017, Maritza was unable to identify [Petitioner] in a live lineup. At trial, she did not remember viewing a six-pack or a live line-up. Maritza later sent [Petitioner]'s booking photograph, which was the same photograph used in the six-pack, to Detective Jara, identifying him as her assailant. She identified [Petitioner] at the preliminary hearing. At trial, when she was asked if she recognized anyone in the courtroom, Maritza looked at the jury twice before looking at the entire courtroom and identifying [Petitioner].

Detective Jara searched [Petitioner]'s BMW. The windows were tinted. The side-view and rearview mirrors were broken. A smoking device for narcotics was in the driver's side area. There was a condom inside the car.

Detective Jara obtained Maritza's cell phone records to triangulate her location based on calls made during the time she was raped. Detective Jara also obtained [Petitioner]'s cell phone records showing the cell tower locations where his phone was used the night he attacked Maritza. Both [Petitioner]'s and Maritza's phones were located about four miles from the motel where [Petitioner] claimed to have been that night.

Maritza did not know anyone named Airam, Eva, or Mariana.

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Interviews of [Petitioner]

Detectives John Bailey and Steve Reid interviewed [Petitioner].[9] Detective Bailey showed [Petitioner] photographs of Airam, Eva, Mariana, and Laura. [Petitioner] repeatedly said he did not recognize or have sex with any of them. [Petitioner] resisted having his DNA taken.

[Petitioner] told the detectives he drove a "space" gray, four-door 535i BMW. [Petitioner] had a roommate, but he did not think his roommate had ever driven his car, although he could not be certain. [Petitioner] lost his identification card sometime that month and had to replace it.

[Petitioner] said he had been baptized 15 years earlier and could not have sex before marriage because it was against the Bible. Before he was baptized, he did not like having sex because he felt guilty afterward, so he abstained. He did not have oral sex because that was considered sex. He prayed away sexual urges. He could not give in to his urges because he would not go to heaven if he indulged them. He would rather die than give in and go to hell. When asked if he had sex with a woman at the Twilight Motel, which was where Mariana was attacked, [Petitioner] first denied it, but then said he did not remember that motel and did not "remember if [he] had sex with somebody over there."

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[9] A recording of the interview was played for the jury.

Detective Jara and Detective Marisa Farias interviewed [Petitioner] less than a day later.[10] Detective Jara showed [Petitioner] a photograph of Maritza, and [Petitioner] said he did not recognize or know her. Detective Jara falsely told [Petitioner] that his DNA was found inside Maritza's anus. Detective Jara asked if [Petitioner] paid Maritza for sex, and [Petitioner] said it was possible, but he did not remember if "that was the lady." Detective Jara said Maritza claimed she defecated when [Petitioner] penetrated her anus in the back seat of his car. [Petitioner] responded that he had hired a prostitute but did not recognize Maritza. He said he did not remember a woman defecating in the back of his car. He had a new car and "would have gone to a motel. It would be much more like classic." He did not like anal sex.

[Petitioner] admitted that he "occasionally like maybe part[ied] on the weekends," but he would go to a motel and would pay a prostitute; he would not have sex in the back of his car. He had money for "high class prostitution" and did not need "to be like back in my car and doing it all over my place." He said, "And that's the part -- if that's the case, that's why she [is] lying."

[Petitioner] said if a woman is selling her body, "[t]hat means she's willing." He explained, "she don't like (unintelligible) happenings, and she took the money. And she probably don't like it, whatever, and she make a police report. That's what's messed up. Because she's a woman, and she wanted to do it."

[10] A recording of the interview was played for the jury.

[Petitioner] said that "it's usually -- it's not force or anything like that. It's probably, you know, money involved." [Petitioner] said he would not do anything with a woman unless she was willing. He believed it was "messed up when they try to, you know, put stuff against me. [¶] . . . [¶] Which they willing to do, and they took the money, right, and that's what's messed up."

[Petitioner] was concerned about getting a ticket for prostitution. After Detective Jara reassured him she would not give him a ticket, he admitted taking a woman to a motel for a "business transaction," and that the woman defecated. [Petitioner] described picking her up from the street around sunset. He offered her a ride, and she agreed. She said she needed money, and they agreed to the transaction in the car before going to the Valley Motel. He said she "really want[ed] it." Once she said she had to leave, they stopped.

[Petitioner] said they were trying to have vaginal sex, and "[m]aybe went the wrong -- probably hit the wrong place or something . . . . [¶] . . . [¶] And then some water come out." [Petitioner] later said he did not notice whether anything came out. He said they did not have sex because of his religion, but they "probably were just poking it." [Petitioner] said they "didn't even do anything. And [he] still give her the money."

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IV.

PETITIONER'S CLAIMS

1. The trial court refused to grant adjournment, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments. (SAP at 21-22; SAP Mem. at 16-20).

2. The trial court refused to grant Petitioner time to hire a new attorney, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments. (SAP at 22; SAP Mem. at 20-24).

3. The trial court admitted evidence of uncharged sexual offenses, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments. (SAP at 22-23; SAP Mem. at 24-27).

4. The prosecution did not present sufficient evidence to sustain the convictions, in violation of Petitioner's right to due process under the Fifth, Sixth, and Fourteenth Amendments. (SAP at 23; SAP Mem. at 27-35).

5. [Dismissed].

6. [Dismissed].

V.

STANDARD OF REVIEW

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal court may not grant an application for writ of habeas corpus on behalf of a person in state custody with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim: (1) "[R]esulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"; or (2) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d); Woodford v. Visciotti, 537 U.S. 19, 24-26

(2002); Early v Packer, 537 U.S. 3, 8 (2002); Williams v. Taylor, 529 U.S. 362, 405-09 (2000).

"Clearly established Federal law" refers to the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision on the merits. Greene v. Fisher, 565 U.S. 34, 38 (2011); Lockyer v. Andrade, 538 U.S. 63, 71-72 (2003). A state court's decision is "contrary to" clearly established Federal law if: (1) It applies a rule that contradicts governing Supreme Court law; or (2) it "confronts a set of facts ... materially indistinguishable" from a decision of the Supreme Court but reaches a different result. See Early, 537 U.S. at 8 (citation omitted); Williams, 529 U.S. at 405-06.

Under the "unreasonable application" prong of § 2254(d)(1), a federal court may grant habeas relief "based on the application of a governing legal principle to a set of facts different from those of the case in which the principle was announced." Lockyer, 538 U.S. at 76 (citation omitted); see also Woodford, 537 U.S. at 24-26 (state court decision "involves an unreasonable application" of clearly established federal law if it identifies the correct governing Supreme Court law but unreasonably applies the law to the facts).

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

"Under § 2254(d), a habeas court must determine what arguments or theories supported, . . . or could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court."

Harrington v. Richter, 562 U.S. 86, 101 (2011). This is "the only question that matters under § 2254(d)(1)." Id. at 102 (citation and internal quotations omitted). Habeas relief may not issue unless "there is no possibility fair minded jurists could disagree that the state court's decision conflicts with [the United States Supreme Court's] precedents." Id. "As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair minded disagreement." Id. at 103.

In applying these standards, the Court ordinarily looks to the last reasoned state court decision. See Wilson v. Sellers, 584 U.S. 122, 127-32 (2018) (endorsing presumption that unexplained decision of state higher court adopted the reasoning of the last reasoned state court decision); see Delgadillo v. Woodford, 527 F.3d 919, 925 (9th Cir. 2008). When no reasoned decision exists, as where the state court summarily denies a claim, "[a] habeas court must determine what arguments or theories . . . could have supported the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." Richter, 562 U.S. at 102; see also Cullen v. Pinholster, 563 U.S. 170, 188 (2011).

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

To decide on a petitioner's claims, the Court reviews the last state court reasoned decision on the merits. Crittenden v. Ayers, 624 F.3d 943, 950 (9th Cir.

2010) (citing Ylst v. Nunnemaker, 501 U.S. 797, 805 (1991)). "Where there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground." Ylst, 501 U.S. at 803.

Petitioner presented claims corresponding to Grounds Two and Four of the Petition in his direct appeal to the California Court of Appeal. (See Lodgment No. 2 at 33-38, 42-47; Respondent's Notice of Supplemental Lodgment ["Supplemental Lodgment"] No. 12 at 5-9 [Docket No. 42]). The California Court of Appeal denied the claims corresponding to Grounds Two and Four of the Petition in a reasoned decision. (Lodgment No. 2 at 21-24, 33-38). The California Supreme Court issued a summary denial (Lodgment No. 4), which is presumed to be a disposition on the merits. See Johnson v. Williams, 568 U.S. 289, 301 (2013) ("When a state court rejects a federal claim without expressly addressing that claim, a federal habeas court must presume that the federal claim was adjudicated on the merits -- but that presumption can in some limited circumstances be rebutted."); Walker v. Martin, 562 U.S. 307, 310 (2011) ("A spare order denying a petition without explanation or citation ordinarily ranks as a disposition on the merits."); Richter, 562 U.S. at 99 ("When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.").

Accordingly, the Court reviews the California Court of Appeal's reasoned decision denying the claims corresponding to Grounds Two and Four of the Petition under the deferential AEDPA standard. See Ylst, 501 U.S. at 803; Shackleford v. Hubbard, 234 F.3d 1072, 1079 n.2 (9th Cir. 2000) (district court "look[s] through" unexplained California Supreme Court decision to the last reasoned decision as the basis for the state court's judgment).

Petitioner presented, for the first time, claims corresponding to Grounds One and Three of the Petition in his Petition for Review to the California Supreme Court. (See Lodgment No. 3 at 10-14, 19-24). Since the California Supreme Court did not address the merits of the claims corresponding to Grounds One and Three of the Petition (see Lodgment No. 4), the Court will review Grounds One and Three of the Petition de novo. See Cone v. Bell, 556 U.S. 449, 479 (2009); Lewis v. Mayle, 391 F.3d 989, 996 (9th Cir. 2004).

VI.

DISCUSSION

A. Habeas Relief is Not Warranted on Ground One.

Petitioner contends that the trial court's refusal to grant an adjournment violated his federal constitutional right to due process. According to Petitioner, "it is clear . . . that Petitioner clearly requested a continuance based on his attorney's obvious failure to prepare Petitioner's case and involve Petitioner in that process." (SAP at 21-22; SAP Mem. at 16-20; see Traverse at 2; Traverse Mem. at 7-8).[11]

1. The Record Below.

On May 9, 2019, the parties announced that they were ready for trial. (2 CT 243). On May 14, 2019, the case was transferred to the trial court for trial. (2 CT 257, 259). That morning, immediately prior to discussing motions in limine and prior to jury selection, the following exchange took place between the trial court and Petitioner in the presence of Petitioner's trial counsel and the prosecutor:

> THE COURT: . . . The first thing I'm told is you do not want to dress out in civilian clothing; is that correct, [Petitioner]?

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[11] Although Petitioner discusses the components of an ineffective assistance of trial counsel claim (see Pet. Mem. at 17-18, citing Strickland v. Washington, 466 U.S. 668, 688-690, 694; Traverse Mem. at 7-8, citing same), Petitioner is not raising an ineffective assistance of trial counsel claim.

[PETITIONER]: Your Honor --

THE COURT: I asked you a question. That's all I want, is an answer. Do you want to dress out in civilian, sir?

[PETITIONER]: At this moment --

THE COURT: We're going to have jurors coming in. When the jury comes, do you want to be wearing civilian clothes?

[PETITIONER]: Well, your Honor, I don't think we're ready, sir.

THE COURT: I'm sorry, sir. Where did you go to law school?

[PETITIONER]: That's my institution, your Honor.

THE COURT: Your attorney has indicated he is ready.

[PETITIONER]: Well, I don't think we're ready, because --

THE COURT: Your attorney is captain of the ship. I go with what he says.

[PETITIONER]: We just discussed the -- my case. And I don't think my attorney fully read my discovery.

THE COURT: He is absolutely prepared. I've known Mr. Koppekin for a long, long time. He is extremely diligent and extremely straightforward.

[PETITIONER]: I don't think we're ready, so --

THE COURT: Sir, I don't care what you think. [¶] You want to wear civilian clothes for the jury or not?

[PETITIONER]: Do we have to get the jury today, because I don't think we're ready?

THE COURT: Sir, you don't have a choice anymore. The only question I ask -- listen to me. First, you're in a different court than you were before. This is a court that does nothing but high profile cases. I

opened, this case came in. [¶] Do you wish to wear civilian clothes or not?

[PETITIONER]: Your Honor, so I can answer you, we're not ready. I need an extension.

THE COURT: That's denied. Now, do you wish to wear civilian clothes or not?

[PETITIONER]: I am not going to pick any juries, because we're not ready.

THE COURT: Sir, your attorney is. You are not.

[PETITIONER]: We're not ready.

THE COURT: Let me give the warning. Under 1043(b)(1) of the Penal Code, you act up, you're excluded from the whole trial. That's the bottom line.

[PETITIONER]: Well, I am not ready. He is not ready.

THE COURT: He's ready.

[PETITIONER]: He is not ready, because I just read -- he just read to me my case. He doesn't fully know my case.

THE COURT: All right. He's ready. You're going to be offered civilian clothes. If you come out without them --

[PETITIONER]: I am not going to wear clothes, because we're not ready.

THE COURT: You're going to trial.

[PETITIONER]: I am asking you to extend --

THE COURT: Denied. That's the second time I said it. [¶] All right. The 1043(b)(1) warning has been given, let the record reflect.

(2 RT 2-4).

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After discussion of the prosecution's motions in limine regarding the admission of evidence, after trial counsel's on-the-record advice to Petitioner to dress in civil clothing, and after a brief recess (see 2 RT 4-10), the following exchange took place between the trial court and Petitioner in the presence of Petitioner's trial counsel and the prosecutor:

> [THE COURT]: . . . I understand, sir, that you do not want to be present during the trial; is that correct?
>
> [PETITIONER]: I don't want to disrespect you, but after I've been talking to my attorney, it seems that we're not ready. I would like to ask you to extend more time for me.
>
> THE COURT: For the third time, that is denied. No.

(2 RT 10).

2. Legal Authority.

The matter of whether to grant a continuance is traditionally within the discretion of the trial judge. Ungar v. Sarafite, 376 U.S. 575, 589 (1964) ("The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel.") (citation omitted); see also Morris v. Slappy, 461 U.S. 1, 11 (1983) ("Trial judges necessarily require a great deal of latitude in scheduling trials."). A trial court does not abuse its discretion in denying a continuance unless the trial court engages in "an unreasoning and arbitrary 'insistence upon expeditiousness in the face of a justifiable request for delay[.]'" Morris, 461 U.S. at 11-12 (citation omitted). "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." Ungar, 376 U.S. at 589 (citations omitted).

The Ninth Circuit has cited four factors for determining whether the denial of a continuance constituted an abuse of discretion: (1) the degree of diligence by the petitioner before seeking the continuance; (2) whether the continuance would have served a useful purpose; (3) whether the continuance would have inconvenienced the trial court or the prosecution; and (4) the amount of prejudice suffered by the petitioner. Armant v. Marquez, 772 F.2d 552, 556 (9th Cir. 1985) (citation omitted). Critically, the petitioner must show that he suffered actual prejudice because of the denied continuance. See Gallego v. McDaniel, 124 F.3d 1065, 2072 (9th Cir. 1997) ("In the absence of a showing of actual prejudice to [the petitioner's] defense resulting from the trial court's refusal to grant a continuance, it cannot be said that the district court erred by denying relief on this ground."); Armant, 772 F.2d at 556-57 ("At a minimum, . . . in order to succeed the [petitioner] must show some prejudice resulting from the court's denial [of a continuance].") (citation omitted).

3. Analysis.

Although Petitioner conclusorily asserts that the denied continuance was prejudicial because "it resulted in the conviction of an innocent man" (Pet. Mem. at 20),[12] Petitioner has failed to show that the denied continuance caused him actual prejudice. Petitioner has not alleged or shown that the trial court's refusal to grant him a continuance denied him the opportunity to present his defense. Moreover, Petitioner did not seek a continuance until the morning trial was set to begin. Finally, while Petitioner sought a continuance based on his assertions that his trial counsel was not ready for trial, his trial counsel had indicated he was ready for trial days before the requested continuance, and his trial counsel did not dispute the trial court's repeated statements that counsel was ready for trial. See Morris, 461 U.S. at 12 ("In the face of the unequivocal and uncontradicted statement by a responsible

[12] Petitioner does not raise a stand-alone claim of actual innocence and, as discussed below, the evidence presented at trial was sufficient to support his conviction.

officer of the court that he was fully prepared and 'ready' for trial, it was far from an abuse of discretion to deny a continuance. On this record, it would have been remarkable had the trial court not accepted counsel's assurances.").

Based on its de novo review, the Court finds that the trial court's denial of Petitioner's request for a continuance did not violate Petitioner's right to due process.

Accordingly, habeas relief is not available on Ground One.

B. Habeas Relief is Not Warranted on Ground Two.

Petitioner contends that the trial court's refusal to grant him time to hire a new attorney violated his federal constitutional right to due process. Petitioner claims that "trial court's refusal to allow Petitioner to retain new counsel without proper justification violated his fundamental right" "to retained counsel of choice." (SAP at 22; SAP Mem. at 20-24; Traverse at 2; Traverse Mem. at 8-10).

1. The Record Below.

Petitioner retained trial counsel to represent him as early as November 29, 2017 (see 2 CT 216), more than 17 months before the day trial was set to begin. (2 CT 257, 259).

Immediately after the trial court denied Petitioner's request for a continuance for the third time, as discussed above, the following exchange took place between the trial court and Petitioner in the presence of Petitioner's trial counsel and the prosecutor:

> THE COURT: . . . You must be present when the jury comes in, and after that you can voluntarily absent yourself. Do you want to do that, or do you want to be present for the trial?
>
> [PETITIONER]: I need more time to hire another attorney your honor.

///

THE COURT: Well, sir, this is now untimely and I will – this will interfere with the preparation of the evidence in this case. Give me one second.

* * * * *

THE COURT: In People vs. O'Malley, O-M-A-L-L-E-Y, at 62 Cal.4th 944, the defendant there are [sic] a long line of cases regarding restrictions on the defendant's request to discharge retained counsel. It will disrupt the orderly process of justice, and we are moments away from bringing in the jury. This is untimely and it would be disruptive in order of the process of justice, and the request to discharge your present counsel is denied. Giving you time to hire another counsel, it is now too late and we are proceeding to trial. [¶] Now, again, I am going to ask you. You can voluntarily waive your right to trial. That's up to you, but you must be here when the jury comes in. Do you want to voluntarily waive your right to be present during the trial? I have a form you can sign. Is this what you wish to do?

[PETITIONER]: Your honor, I need more time to hire another attorney.

THE COURT: Denied. The jury will be in momentarily. The defendant may remain right there.

(2 RT 10-11).

2. Legal Authority.

The right to counsel under the Sixth Amendment encompasses a right to retain counsel of one's choice. Wheat v. United States, 486 U.S. 153, 159 (1988) ("the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment"); Powell v. Alabama, 287 U.S. 45, 53 ("a defendant should be afforded a fair opportunity to secure counsel of his own choice"). However, "the

essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure a defendant will inexorably be represented by the lawyer whom he prefers." Wheat, 486 U.S. at 159. The right to retained counsel is qualified. See id. ("The Sixth Amendment right to choose one's own counsel is circumscribed in several important respects."); United States v. Walters, 309 F.3d 589, 592 (9th Cir. 2002) ("the right is qualified in that it may be abridged to serve some 'compelling purpose'") (quoting United States v. D'Amore, 56 F.3d 1202, 1204 (9th Cir. 1995), overruled on other grounds by United States v. Garrett, 179 F.3d 1143 (9th Cir. 1999)). "[E]xercise of this right cannot unduly hinder the fair, efficient and orderly administration of justice." Walters, 309 F.3d at 592 (citation omitted); see also Morris, 461 U.S. at 11-12 ("only an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel") (internal quotation marks and citation omitted); United States v. Gonzalez-Lopez, 548 U.S. 140, 152 (2006) ("We have recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar[.]") (citation and internal citation omitted). In other words, trial courts "retain the discretion to 'make scheduling and other decisions that effectively exclude a defendant's first choice of counsel.'" Miller v. Blackletter, 525 F.3d 890, 895 (9th Cir. 2008) (quoting Gonzalez-Lopez, 548 U.S. at 152). "When a criminal defendant's constitutional right to secure counsel of his choice conflicts with the trial judge's discretionary power to deny continuances, the reviewing court must balance several factors," including "whether the continuance would inconvenience witnesses, the court, counsel, or the parties," "whether other continuances have been granted," "whether legitimate reasons exist for the delay," "whether the delay is the defendant's fault;" and "whether a denial would prejudice the defendant." United States v. Kelm, 827 F.2d 1319, 1322 (9th Cir. 1987). "Where the right to be assisted

by counsel of one's choice is wrongly denied, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received." Gonzalez-Lopez, 548 U.S. at 148; see also Miller, 525 F.3d at 895 ("[A] defendant who establishes that his right to counsel of choice was violated need not demonstrate prejudice in order to be entitled to relief[.]") (citation omitted).

3. The California Court of Appeal's Opinion.

The California Court of Appeal addressed Petitioner's claim as follows:

> In this case, the trial court balanced [Petitioner's] concern that defense counsel was not yet ready to go to trial against the state's interest in proceeding to trial with a jury at the ready, and determined that the state's interest was greater. On the day of trial, [Petitioner] asked for a continuance multiple times based on his claim that defense counsel was not ready, but he gave no indication that he wished to discharge counsel until the trial court denied his request for a continuance a third time. Until that point, it appears [Petitioner] intended to proceed with his current attorney, albeit with extended time for preparation. [Petitioner] did not express any other concerns regarding defense counsel, nor did he specifically state what his attorney did not know about his case, or how he would be adversely impacted if trial proceeded. Counsel had represented [Petitioner] for almost a year and a half before the trial commenced. [Petitioner] was present when counsel declared that the defense was ready for trial five days before trial, and had not contested that counsel was prepared to try the case at that time. Nothing in the record indicates that [Petitioner]

had concerns about defense counsel's performance prior to the day of trial, which suggests that the request was a dilatory tactic. The trial judge, who was very familiar with defense counsel professionally, stated that he was confident that defense counsel was well-prepared. The record shows that the trial court discussed [Petitioner]'s concerns regarding his attorney with him, and determined that they were unfounded.

In ruling on the motion to discharge retained counsel, the trial court cited to People v. O'Malley (2016) 62 Cal.4th 944, in which our Supreme Court noted that "while 'a defendant seeking to discharge his retained attorney is not *required* to demonstrate inadequate representation or an irreconcilable conflict, this does not mean that the trial court cannot properly consider the absence of such circumstances in deciding whether discharging counsel would result in disruption of the orderly processes of justice.' [Citation.]" (Id. at p. 1004.) The trial court stated that granting the motion would "interfere with the preparation of the evidence" and noted that the court was "moments away from bringing in the jury"—i.e., it determined that the state's interest in the orderly processes of justice was greater that defendant's interest in discharging counsel. The trial court's denial of [Petitioner's] motion was not an abuse of discretion.

(Lodgment No. 2 at 23-24).

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4. Analysis.

Since the United States Supreme Court has not addressed the parameters of a trial court's discretion in balancing a defendant's right to counsel of choice against specific countervailing judicial interests, such as those discussed in Kelm, the Court is unable to find that the California Court of Appeal's rejection of Petitioner's claim was contrary to or an unreasonable application of clearly established Supreme Court law. See Knowles v. Mirzayance, 556 U.S. 111, 122 (2009) ("[I]t is not 'an unreasonable application of' 'clearly established Federal law' for a state court to decline to apply a specific legal rule that has not been squarely established by this Court"); Wright v. Van Patten, 552 U.S. 120, 126 (2008) (per curiam) ("Because our cases give no clear answer to the question presented, let alone one in [the petitioner's] favor, it cannot be said that the state court unreasonabl[y] appli[ed] clearly established Federal law.") (internal quotation marks omitted); Carey v. Musladin, 549 U.S. 70, 77 (2006) ("Given the lack of holdings from this Court regarding" the claim, "it cannot be said that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'") (alterations in original)); Brewer v. Hall, 378 F.3d 952, 955 (9th Cir. 2004) ("If no Supreme Court precedent creates clearly established federal law relating to the legal issue the habeas petitioner raised in state court, the state court's decision cannot be contrary to or an unreasonable application of clearly established federal law.").

Even assuming Petitioner's claim involves clearly established Supreme Court law, Petitioner is not entitled to habeas relief. As the California Court of Appeal implicitly found, the trial court properly found that a continuance for Petitioner to hire another attorney would inconvenience the witnesses, the court, and the parties. (See 2 RT at 11 (the trial court stated that a continuance "will interfere with the preparation of the evidence in this case" and "will disrupt the orderly process of justice, and we are moments away from bringing in the jury")). Moreover, as the

California Court of Appeal implicitly found, Petitioner's delay in requesting a continuance to hire another attorney was Petitioner's fault. Although Petitioner's retained counsel had represented him for almost a year and half, Petitioner had not previously complained of his counsel's unpreparedness, even when his counsel stated that the defense was ready for trial five days earlier. Finally, and critically, as the California Court of Appeal implicitly found, legitimate reasons did not exist for the delay for Petitioner's request for a continuance to hire another attorney. Petitioner had not complained about his trial counsel's unpreparedness for trial until the day of trial. Petitioner did not request a continuance to hire another attorney until the day of trial, which the trial court found was untimely (2 RT 10-11). See United States v. Williams, 594 F.2d 1258, 1260-61 (9th Cir. 1979) ("[W]here the request for a change of counsel comes during the trial, or on the eve of trial, the Court may, in the exercise of sound discretion, refuse to delay the trial to obtain new counsel and therefore may reject the request."). Petitioner only requested a continuance to hire another attorney after his prior requests for a trial continuance had been denied. And the trial court had expressed confidence in Petitioner's trial counsel's preparation for trial based on the trial court's past experience with Petitioner's trial counsel. (2 RT 3). With no legitimate justification for the delay, the trial court's decision to deny Petitioner's request for a continuance to hire another attorney was not the kind of "the type of unreasoning and arbitrary insistence on expeditiousness that clearly established federal law prohibits." See Miller, 525 F.3d at 898 (citing Morris, 461 U.S. at 11-12).

The Court finds that the California Court of Appeal's rejection of this claim was neither contrary to nor involved an unreasonable application of clearly established Supreme Court law. Accordingly, habeas relief is not warranted on Ground Two.

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C. Habeas Relief is Not Warranted on Ground Three.

Petitioner contends that the trial court's admission of evidence of uncharged sexual offenses violated Petitioner's federal constitutional right to due process. According to Petitioner: "By admitting [the evidence of the uncharged sexual offenses] that was unrelated to the charges at issue in Petitioner's case, the People prejudiced the jury against Petitioner by painting him as a serial rapist although they could not factually establish that allegation. Accordingly, the jury's verdict was a product of passion and not the merits of the case." (SAP at 22-23; SAP Mem. at 24-27; see also Traverse at 2; Traverse Mem. at 10-11).

1. The Record Below.

Prior to trial, the prosecution moved, in limine, to introduce evidence of two prior uncharged sexual offenses (rape and sodomy) by Petitioner -- one involving Laura H. in 2015, and one involving Patrice G. in 2016 – in order to prove propensity, motive, intent, plan, and absence of accident, pursuant to California Evidence Code §§ 1101(b)[13] and 1108.[14] (2 CT 254).

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[13] California Evidence Code Section 1101 provides in pertinent part:

(a) Except as provided in this section and Sections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible whether offered to prove his or her conduct on a specified occasion.

(b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act.

Cal. Evid. Code Section 1101(a), (b).

[14] California Evidence Code Section 1108(a) provides: "In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352."

At the hearing on the motion, the prosecution argued as follows:

> . . . There are two individual witnesses we'd like to introduce, based on those Code sections. The first one is Laura H[]. The second one is Patrice G. Laura H[]. was an individual who the defendant had seen in the street and essentially had stopped and asked whether, quote, unquote, "You want to party?" to which she believed that that terminology meant to do drugs. The defendant then picked her up, took her to a motel, and essentially asked her for sex, and continuously asked her for sex, to the point when she declined his requests, he began to then – proceeded to sodomize and rape her, which is extremely in line with the type of conduct that he had done to the four named victims in this case.
>
> Patrice G. is a prostitute who was working the streets, and this defendant had picked her up and again, asked for her services, but she never agreed to anal sex. She only agreed to the vaginal sex, your Honor. The defendant did not take her declination as she had indicated, and continued to sodomize her, which he did to the three of the four named victims in this case.
>
> We would argue, your Honor, that it goes to propensity, and it does go to pattern of conduct by this defendant.

(2 RT 4-5).

Petitioner's counsel responded as follows:

> There are multiple named victims in this case. If the People believed in good faith that they had cases against these two individuals, they would have filed charges against them. I believe this is tenuous, at best. These were prostitute/client disputes in this case – in these two cases. The People did not formally charge [Petitioner] with these two

charges. They are well within the limit, if we're not talking about something so far removed that's outside that they couldn't charge it and they're trying to show a pattern of propensity. This is within the statute. They didn't have enough evidence to bring this forth for trial purposes, so now they're trying to end-run for a pattern push under 1108. I believe its overly prejudicial. I do not believe it meets the requirements, and I would ask the court to exclude this evidence from testimony.

(2 RT 5-6).

The trial court ruled on the motion in limine as follows:

> Researching the law as I have, I am familiar with People vs. Daveggio, D-A-V-E-G-G-I-O, and Michaud, [(2018)] 4 Cal.5th 790. Daveggio and Michaud held, to determine whether evidence 1108 crimes are admissible, the Court must, under 352 analysis -- Evidence Code 352[15] -- consider such factors as its nature, its relevance, possible remoteness, the degree of certainty, its commission, and the likelihood of confusing, misleading, or distracting the jury from its main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense or offenses, and the availability of less prejudicial alternatives to the outright admission, such as admitting some, but not all of the defendant's other sex offenses, including irrelevant inflammatory details surrounding the offense. In utilizing a 352 analysis as I am speaking, I am doing that.

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[15] [California Evidence Code Section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."]

> I do find that there are two incidences that are of probative value under 1108 . . . that outweighs any prejudice to the defendant . . . and, as such, I would allow their admission; however, it would be coming in solely under [that section], and not under 1101(b).

(2 RT 6-7; footnote omitted, bracketed footnote added).

At trial, the trial court presented evidence of Petitioner's prior uncharged sexual act only as to Laura H on April 2, 2015. (See 2 RT 673-83). The California Court of Appeal summarized Laura H.'s testimony as follows:

> Laura H.'s testimony was brief, occupying only 10 pages of transcript. Laura H. recounted that [Petitioner] called her over to his car while she was waiting at a bus stop and asked if she "partied."[16] She took this to be an invitation to smoke methamphetamine.[17] She accepted and got into the car with [Petitioner].[18] She explicitly told him that she did not intend to have sex with him, which he said was fine.[19] He handed her a pipe, which she smoked in the car.[20] [Petitioner] procured a hotel room.[21] Laura H. accompanied him inside and they smoked methamphetamine.[22] Laura H. left the bedroom to go to the bathroom.[23] [Petitioner] tried to follow her, but she closed the door and locked it.[24] When she returned, [Petitioner] was naked.[25] Laura H. was concerned that this meant [Petitioner]

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[16] [2 RT 675].
[17] [2 RT 675].
[18] [2 RT 676].
[19] [2 RT 676].
[20] [2 RT 676, 680].
[21] [2 RT 676-77].
[22] [2 RT 677].
[23] [2 RT 677].
[24] [2 RT 677].
[25] [2 RT 677, 681].

wanted to have sex.[26] She tried to leave the room, but [Petitioner] blocked the door with a chair.[27] She told [Petitioner] that she did not want to have sex with him.[28] Laura H. then saw a pipe with more drugs in it, so she started smoking again.[29] [Petitioner] came up behind her, held her arms, and unbuttoned her pants, and placed his penis between her thighs and on her anus.[30] Laura H. pulled her pants up and kicked out behind her, knocking [Petitioner] onto the bed.[31] She grabbed $20 that was sitting on the nightstand and ran out of the room.[32] The money on the table belonged to [Petitioner].[33] Laura H. stole it to buy alcohol.[34] She had a criminal record for stealing and drug use.[35] She was a drug addict and an alcoholic at the time of the assault.[36] She was not a prostitute and has never been a prostitute.[37] She never consented to [Petitioner] touching her.[38] [Petitioner] did not offer her money to go to the room with him.[39] Laura H. was not acquainted with any of the other victims in the case.[40]

(Lodgment No. 2 at 26-27).

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[26] [2 RT 677].
[27] [2 RT 677-78, 681].
[28] [2 RT 677].
[29] [2 RT 678, 681].
[30] [2 RT 678, 681].
[31] [2 RT 678, 680-81].
[32] [2 RT 678, 682].
[33] [2 RT 678].
[34] [2 RT 678-79].
[35] [2 RT 679].
[36] [2 RT 679-80].
[37] [2 RT 679].
[38] [2 RT 679].
[39] [2 RT 682].
[40] [2 RT 682-83].

Following closing arguments, the trial court instructed the jury as to how they should consider such evidence. (See 4 RT 1864-66; 2 CT 302-05).[41]

The California Court of Appeal found that the trial court properly admitted evidence of Petitioner's prior uncharged sexual offense against Laura H. under California law. (See Lodgment No. 2 at 30-32).

2. Legal Authority.

On federal habeas review, the due process inquiry is whether the admission of evidence was arbitrary or so prejudicial such that it rendered the trial fundamentally unfair. See Estelle v. McGuire, 502 U.S. at 67; Walters v. Maass, 45

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[41] The trial court instructed the jury as follows:

> Evidence of an uncharged sexual offense has been received. If you find by a preponderance of the evidence that the defendant committed any other such uncharged sexual offense, you may, but are not required to, infer the defendant had a disposition to commit sexual offenses. If you find that the defendant had this disposition, you may, but are not required to infer that he was likely to commit and did commit the sexual crime or crimes for which he is accused; however, even though you find by a preponderance of the evidence that the defendant committed another uncharged sexual offense, that is not sufficient by itself to prove beyond a reasonable doubt that he committed the charged crimes you are determining. If you determine an inference properly can be drawn from this evidence, this inference can simply be one item for you to consider, along with all other evidence, in determining whether the defendant has been proved guilty beyond a reasonable doubt of the charged crimes that you are determining.
>
> You must not consider this evidence for any other purpose.
>
> Within the meaning of the preceding instruction, the prosecution has the burden of proving by preponderance of the evidence the defendant committed a sexual offense other than those for which he is on trial. You must not consider this evidence for any purpose, unless you find by a preponderance of the evidence that the defendant committed the other sexual offense. If you find the crime was committed by a preponderance of the evidence, you are nevertheless cautioned and reminded that before the defendant can be found guilty of any crimes charged or any included crime in this trial, the evidence must persuade you beyond a reasonable doubt that the defendant is guilty of that crime.
>
> The "preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to find that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it.

(4 RT 1864-66; see 2 CT 302-05).

F.3d 1355, 1357 (9th Cir. 1995); see also Jeffries v. Blodgett, 5 F.3d 1180, 1192 (9th Cir. 1993) (as amended) ("Habeas relief is available for wrongly admitted evidence only when the questioned evidence renders the trial so fundamentally unfair as to violate federal due process."). The Supreme Court has not clearly held that "admission of irrelevant or overly prejudicial evidence constitutes a due process violation sufficient to warrant issue of the writ." Holley v. Yarborough, 568 F.3d 1091, 1101 (9th Cir. 2009); see also Walden v. Shinn, 990 F.3d 1183, 1204 (9th Cir. 2021) (noting Holley's holding "remains true" that no clearly established federal law addresses the admission of unduly prejudicial evidence). The admission of evidence violates due process only "if there are no permissible inferences the jury may draw" from the evidence. Boyde v. Brown, 404 F.3d 1159, 1172 (9th Cir. 2005) (quoting Jammal v. Van de Kamp, 926 F.2d 918, 920 (9th Cir. 1991)) (emphasis in original), amended by 421 F.3d 1154 (9th Cir. 2005). Even then, the evidence must be "of such quality as necessarily prevents a fair trial." Jammal, 926 F.2d at 920. "A habeas petitioner bears a heavy burden in showing a due process violation based on an evidentiary decision." Boyde, 404 F.3d at 1172.

3. Analysis.

The trial court's admission of the evidence of Petitioner's uncharged sexual offense against Laura H. on April 2, 2015 was relevant to show that Petitioner committed the sexual offenses against the four victims in this case (Mariana V. on April 21, 2017, see 2 RT 398; 3 RT 903, 1218; Airam H. on February 26, 2012, see 2 RT 331; Eva E. on March 31, 2016, see 2 RT 413-15; and Maritza M. on January 29, 2017, see 2 RT 630-31). The incident involving Laura H. was not very remote in time to the incidents involving the four victims in this case. Moreover, the incident involving Laura H. strongly resembled the incidents involving Mariana V., Airam H., and Eva E. in which Petitioner picked them up on the street and drove them to motels to commit the sexual offenses, and somewhat resembled the incident

involving Maritza E. in which Petitioner picked her up on the street and drove her to an unknown place to commit the sexual offenses. From such evidence, the jury could permissibly infer that Petitioner had the propensity to engage in unlawful sexual conduct and that Petitioner acted against the victims in this case in conformity with a pattern of unlawful sexual conduct. See e.g., Boyde, 404 F.3d at 1172 ("The prosecution had to prove that [the petitioner] committed the Gibson robbery. One typical—and constitutionally permissible—way to do this is to show that the crime shared certain characteristics—a modus operandi—with other crimes that [the petitioner] had committed). Moreover, as noted above, the jury was instructed that it may consider the uncharged sexual offense evidence only if the People proved by a preponderance of the evidence that Petitioner committed the uncharged sexual offense, that even if the jury did find that Petitioner committed the uncharged sexual offense, that conclusion was not sufficient by itself to prove that Petitioner was guilty of the charged crimes but was only one factor to consider along with all the other evidence, and that the People still must prove each charge beyond a reasonable doubt. (4 RT 1864-86; see 2 CT 302-04). The jury is presumed to have followed the trial court's instructions, Weeks v. Angelone, 528 U.S. 225, 234 (2000), and Petitioner has not rebutted this presumption. As such, the admission of the challenged evidence did not violate Petitioner's due process rights or render his trial fundamentally unfair. See McGuire, 502 U.S. at 70 (the admission of relevant evidence does not violate due process)); United States v. LeMay, 260 F.3d 1018, 1028-29 (9th Cir. 2001) (the admission of relevant sexual propensity evidence did not violate due process).

Based on its de novo review, the Court finds that the trial court's admission of the evidence of Petitioner's uncharged sexual offense against Laura H. did not violate Petitioner's right to due process.

Accordingly, habeas relief is not available on Ground Three.

D. Habeas Relief is Not Warranted on Ground Four.

Petitioner contends that the prosecution did not present sufficient evidence to sustain his convictions, in violation of Petitioner's federal constitutional right to due process. Petitioner claims that each of the four victims "lied about a material fact such that it was unreasonable for the jury not to disregard the entirety of that person's testimony." (SAP at 23; SAP Mem. at 27-35; see Traverse at 3; Traverse Mem. at 11-14).

1. Legal Authority.

The Due Process Clause of the Fourteenth Amendment "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970). When challenging the sufficiency of the evidence supporting a conviction, a federal habeas petitioner is entitled to relief only if "it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 324 (1979). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id. at 319 (emphasis in original).

"[I]t is the responsibility of the jury -- not the court -- to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury." Cavazos v. Smith, 565 U.S. 1, 2 (2011) (per curiam). Accordingly, the reviewing court "must respect the province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts by assuming that the jury resolved all conflicts in a manner that supports the verdict." Maass, 45 F.3d at

1358. If the record supports conflicting inferences, the court "must presume -- even if it does not affirmatively appear in the record -- that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." Jackson, 443 U.S. at 326. In other words, the court "cannot second-guess the jury's credibility assessments"; under the Jackson standard, such determinations are "generally beyond the scope of review." Kyzar v. Ryan, 780 F.3d 940, 943 (9th Cir. 2015) (citation omitted).

Under AEDPA, a reviewing habeas court applies "an additional layer of deference": Habeas relief is not warranted unless "the state court's application of the Jackson standard [was] 'objectively unreasonable.'" Juan H. v. Allen, 408 F.3d 1262, 1274, 1275 n.13 (9th Cir. 2005) (as amended) (citation omitted); see also Smith, 565 U.S. at 7 ("[A] federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was 'objectively unreasonable.'") (citation omitted).

2. The California Court of Appeal's Opinion.

The California Court of Appeal considered Petitioner's argument that there was insufficient evidence to support the convictions because the testimony of each of the victims about a material fact was not credible. (See Lodgment No. 2 at 33). The Court of Appeal rejected Petitioner's sufficiency of the evidence claim, reasoning as follows:

> [Petitioner] asserts that Mariana's testimony (counts 1-4) that he sodomized and attempted to strangle her[42] was not credible because the SART nurse did not observe any outward signs of injury to her neck or anus,[43] and that her lack of credibility on these points undermines

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[42] [2 RT 392-93, 395-98].

[43] [3 RT 909, 920-22].

the rest of her testimony. [Petitioner] cites no legal authority for the proposition that a sexual assault allegation must be supported by physical evidence of injury or expert testimony. To the contrary, the testimony of a single witness is sufficient to support conviction unless the testimony is physically impossible or inherently improbable. ([People v.] Young, [(2005)], 34 Cal.4th [1149,] at p. 1181.) The law does not support [Petitioner]'s assertion that we must overturn his convictions for crimes against Mariana on this basis.

Regardless, the evidence against [Petitioner] in counts 1-4 was overwhelming. In addition to Mariana's testimony, the SART nurse who conducted the exam noted that Mariana was disheveled, her makeup was running down her face, and her hair was messy.[44] Her vagina was red and possibly bruised, and she had small, red abrasions inside her mouth and left cheek.[45] Although there were no injuries to Mariana's anus, Mariana had reported that [Petitioner] used Vaseline when he sodomized her.[46] In the SART nurse's opinion, the injuries were consistent with Mariana's account of events.[47] Deputy Morse observed an empty jar of Vaseline on the nightstand in the hotel room.[48] A DNA sample from Mariana's left breast showed [Petitioner] as a major contributor.[49]

[Petitioner] argues that Airam (count 5) admitted she lied to the police when she told them [Petitioner] pushed her into his car.[50]

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[44] [3 RT 907].
[45] [3 RT 909-11].
[46] [3 RT 910].
[47] [3 RT 910-11].
[48] [3 RT 1222].
[49] [3 RT 940-41].
[50] [2 RT 359].

[Petitioner] also suggests that Airam's failure to call for help on her cell phone[51] brings her testimony into question. Such determinations are for the jury, which may choose to credit a witness even if it believes portions of her testimony are false.[52] (People v. Flores (1968) 267 Cal.App.2d 452, 457 ["'[t]he jury may reject any part of a witness' testimony and give credence to other portions'"].)

In this case, Airam explained that she had reported an assault to police in the past, and nothing was done about it.[53] She was also embarrassed that she got into [Petitioner]'s car willingly.[54] She lied because she wanted to make sure the police investigated the crime.[55] Airam testified that [Petitioner] took her cell phone when she refused

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[51] [2 RT 362-63].

[52] To quote Brandt v. Krogh (1910) 14 Cal.App. 39, 48 (Brandt), upon which [Petitioner] appears to rely ([Petitioner] cites to an unpublished case, which in turn cites Brandt) in full: "[I]t is obviously a mistake to suppose that, because a witness may make inconsistent statements in the course of testimony given by him, such testimony is, in its entirety, to be disbelieved. The rule, 'Falsus in uno, falsus in omnibus,' does not mean that a witness' entire testimony must necessarily be disregarded or disbelieved because there may be found falsehood in certain parts of it. The rule merely means that where the witness is found to have sworn falsely in a certain material part of his testimony, his entire testimony may for that reason be rejected. But no one will attempt to challenge the right of a jury or a judge, trying the facts, to believe and credit certain parts of the testimony of a witness who has been shown to have sworn falsely as to certain other material parts thereof. [Moreover], this rule is one which cannot well be invoked in a court of appeal on a review of the facts. It, like any other rule which may be resorted to by triers of facts for the purpose of weighing testimony and measuring the credibility of witnesses, is intended as a guide to those who must hear and see the witnesses and thus receive the evidence at first hand."

[53] [2 RT 359-60].

[54] [2 RT 355-56].

[55] [2 RT 359-60].

to accompany him into the hotel room.[56] She did not regain possession of it until after the attacks.[57] Officer Cueva recovered Airam's cell phone from [Petitioner], who admitted it belonged to a woman.[58] In an interview with police, [Petitioner] admitted that he had picked up a woman at a bus stop, who he described as not being a prostitute, but a "working girl" with two kids,[59] which was consistent with Airam's account and her self-description.[60]

[Petitioner] argues that Eva's testimony (counts 6-9) that there were four locks on the hotel door[61] and that she hit [Petitioner] in the head with a phone when trying to escape him,[62] was undermined by the prosecution's failure to produce photographs of the door or the phone.

The defense produced no evidence to rebut either of these facts, but merely pointed to the prosecution's failure to provide photographic evidence in closing argument.[63] There was overwhelming evidence of the attack against Eva. Eva testified that she sprayed pepper spray on [Petitioner]'s eyes and penis.[64] Police officers found [Petitioner] in a motel across the street from the church where Eva sought shelter.[65] Officer Vasquez noticed redness on both sides of

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[56] [2 RT 352].
[57] [2 RT 357-59].
[58] [2 RT 687-88].
[59] [2 RT 617-18].
[60] [2 RT 331-32, 334, 336-37, 339, 343-44, 348].
[61] [2 RT 419].
[62] [2 RT 420].
[63] [4 RT 1829].
[64] [2 RT 420].
[65] [2 RT 426, 692].

[Petitioner]'s head and above his left eyebrow.[66] [Petitioner] had an orange-colored stain on his face.[67] [Petitioner]'s shirt also had orange stains.[68] His arm had apparent bite marks, and the back of his head was scratched.[69] The room looked and smelled like a lot of pepper spray had been discharged.[70] Pepper spray stains were on the headboard and a lamp.[71] Photographs depicted redness around Eva's neck consistent with her testimony that he attempted to strangle her.[72] A SART nurse noted that Eva had multiple injuries, including bruising and abrasions on her anus that indicated anal penetration.[73] DNA taken from a condom recovered in the investigation included [Petitioner] and Eva as possible contributors,[74] which also supported her version of events.

Finally, with respect to Maritza (counts 10-12), [Petitioner] argues that Maritza's inability to identify him in a photographic six pack or in a six-man in person line-up at the county jail[75] undermines her credibility. Other strong evidence was presented to prove [Petitioner]'s identity, however. DNA from a sample on Maritza's underwear contained a mixture of DNA from Maritza and [Petitioner].[76] Maritza described [Petitioner]'s appearance to a sketch

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[66] [2 RT 692-93].
[67] [2 RT 692-93].
[68] [2 RT 697].
[69] [2 RT 697].
[70] [2 RT 701].
[71] [2 RT 429-30].
[72] [2 RT 410, 437-38].
[73] [3 RT 1245-46].
[74] [3 RT 952-57].
[75] [3 RT 1303-06; see also 2 RT 663-64 (Maritza testified she could not remember going to the photographic lineup or the in-person lineup)].
[76] [3 RT 1288-89].

> artist who drew a sketch that Maritza recognized the as depicting her attacker.[77] Maritza sent a booking photograph of [Petitioner] to Detective Jara, identifying him as her assailant.[78] She also identified [Petitioner] at the preliminary hearing, and at trial.[79]
>
> The People presented substantial evidence to establish [Petitioner]'s guilt. The jury had all of the information it needed to determine the effect of any inconsistencies on the victims' credibility as witnesses. We will not second-guess its findings. (See [People v.] Casares, [(2016)] 62 Cal.4th [808,] at p. 823 ["'it is the jury rather than the reviewing court that weighs the evidence'"].)

(Lodgment No. 2 at 34-38; renumbered footnote in original, bracketed footnotes added).

3. Analysis.

The Court finds that the California Court of Appeal engaged in a thorough analysis of Petitioner's sufficiency of the evidence claim, and concurs with its reasoning and conclusion. Contrary to Petitioner's assertions, the alleged issues with the victims' testimony did not result in there being insufficient evidence to support Petitioner's convictions. As the California Court of Appeal found, the evidence presented at trial was more than sufficient to sustain Petitioner's convictions. Petitioner, in essence, is seeking for the Court to reweigh the witnesses' credibility, which the Court is precluded from doing. See Schlup v. Delo, 513 U.S. 298, 330 (1995) ("[U]nder Jackson [v. Virginia], the assessment of the credibility of witnesses is generally beyond the scope of review."); Wright v. West, 505 U.S. 277, 296-97 (1992).

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[77] [2 RT 652-53; 3 RT 1265-66].
[78] [2 RT 664-65; 3 RT 1306-07].
[79] [2 RT 633, 666].

After viewing the evidence in the light most favorable to the prosecution, a rational jury could have found beyond a reasonable doubt that Petitioner was guilty of all the sexual offenses.

The Court finds that the California Court of Appeal's rejection of Petitioner's insufficiency of the evidence claim was not contrary to or an unreasonable application of clearly established Supreme Court law. Accordingly, habeas relief is not warranted on Ground Four.

E. An Evidentiary Hearing is Not Warranted.

In the Traverse, Petitioner requests an evidentiary hearing on the claims alleged in the Petition. (See Traverse at 2-3; Traverse Mem. at 6, 8, 10-11, 14).

However, an evidentiary hearing is not necessary where, as here, the issues can be resolved by reference to the state court record. See Totten v. Merkle, 137 F.3d 1172, 1176 (9th Cir. 1998) ("It is axiomatic that when issues can be resolved by reference to the state court record, an evidentiary hearing becomes nothing more than a futile exercise.").

VII.

RECOMMENDATION

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

DATED: September 24, 2025

DAVID T. BRISTOW
UNITED STATES MAGISTRATE JUDGE

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.

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