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FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
MAY 29 2012
CENTRAL DISTRICT OF CALIFORNIA
BY *J* DEPUTY

8 UNITED STATES DISTRICT COURT
9
10 CENTRAL DISTRICT OF CALIFORNIA

11 JOSE RODRIGUEZ,) Case No. CV 12-0765-JPR
12)
13 vs.) Petitioner,) MEMORANDUM OPINION AND ORDER
14 T. OCHOA, Warden,)) DENYING PETITION AND DISMISSING
15)) ACTION WITH PREJUDICE
16) Respondent.)
17)

17 PROCEEDINGS

18 On January 27, 2012, Petitioner filed a Petition for Writ of
19 Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C.
20 § 2254. On March 21, 2012, after one extension of time,
21 Respondent filed an Answer with an attached Memorandum of Points
22 and Authorities. Petitioner did not file a reply. For the
23 reasons discussed below, the Court denies the Petition and
24 dismisses this action with prejudice.

25 BACKGROUND

26 On April 9, 2010, Petitioner was convicted by a jury of two
27 counts of assault with a deadly weapon (Cal. Penal Code
28 § 245(a)(1)). (Lodged Doc. 8, Clerk's Tr. at 21-23, 117-18,

1 121.) For each count, the jury found true that Petitioner
2 personally inflicted great bodily injury (Cal. Penal Code
3 § 12022.7) and used a knife (id. § 12022(b)(1)). (Lodged Doc. 8,
4 Clerk's Tr. at 117-18.) The jury acquitted Petitioner of
5 attempted murder. (Id. at 121.)

6 On July 15, 2010, the trial court struck the great-bodily-
7 injury enhancements and sentenced Petitioner to three years in
8 state prison. (Id. at 161-65.) He appealed, raising three
9 arguments that correspond to the three grounds for relief alleged
10 in the Petition. (Lodged Doc. 1.) On August 24, 2011, the
11 California Court of Appeal affirmed the judgment but modified
12 Petitioner's sentence to strike the deadly-weapon enhancement and
13 stay a concurrent sentence. (Lodged Doc. 4.) On September 26,
14 2011, Petitioner filed a Petition for Review in the California
15 Supreme Court, which summarily denied it on November 2, 2011.
16 (Lodged Docs. 5, 6.) Petitioner did not file any state habeas
17 petitions. (See Pet. at 5.)

18 **PETITIONER'S CLAIMS**

- 19 1. The trial court allowed the prosecution to present
20 evidence and argument regarding Petitioner's silence in
21 response to a police officer's questions, violating
22 Petitioner's due process rights, Miranda v. Arizona,
23 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966),
24 and Doyle v. Ohio, 426 U.S. 610, 96 S. Ct. 2240, 49 L.
25 Ed. 2d 91 (1976). (Pet. at 6.)
- 26 2. The trial court excluded relevant testimony from a
27 defense witness, violating Petitioner's right to due
28 process and to present a defense. (Pet. at 7.)

1 3. The trial court erred in instructing the jury on
2 Petitioner's flight from the scene of the crime. (Pet.
3 at 8.)

4 **SUMMARY OF THE EVIDENCE PRESENTED AT TRIAL**

5 The factual summary set forth in a state appellate court
6 opinion is entitled to a presumption of correctness pursuant to
7 28 U.S.C. § 2254(e)(1). See Vasquez v. Kirkland, 572 F.3d 1029,
8 1031 n.1 (9th Cir. 2009). Because Petitioner does not challenge
9 the sufficiency of the evidence, the Court adopts the following
10 factual summary from the California Court of Appeal opinion as a
11 fair and accurate summary of the evidence presented at trial.

12 **I. The Prosecution Case**

13 In approximately July or August of 2009, Jose Santos
14 Escobar [FN3] rented a bedroom in an apartment in Compton
15 that Sandra Munoz shared with [Petitioner] and her three
16 children. At the time, Escobar had a romantic
17 relationship with Munoz and it continued after he moved
18 in. In the early part of November, Munoz asked Escobar
19 to move to the attached garage. According to Escobar,
20 she requested that he move because [Petitioner] was
21 jealous of him.

22 [FN3.] Escobar acknowledged he had suffered
23 two prior convictions for possession of drugs
24 with the intent to sell. He also admitted
25 obtaining fake identification cards and using
26 different names.

27 On the night of November 4, 2009, Escobar returned
28 home from work. He went into the apartment to take a

1 shower. [Petitioner] and Munoz's children were inside.
2 As Escobar walked toward [Petitioner], [Petitioner]
3 stared at him and asked, "What's going on between you and
4 my woman?" Escobar replied that if [Petitioner] wanted
5 to know, he had to ask Munoz. As Escobar walked by,
6 [Petitioner] touched him in the back and when Escobar
7 turned, [Petitioner] stabbed him in the sternum with a
8 pocket knife. Escobar had no weapons and was carrying
9 nothing in his hands. [Petitioner] continued to stab
10 Escobar in the chest, arms, and legs and said a number of
11 times that he was going to kill him. During the attack,
12 [Petitioner] also slashed Escobar's face. As the assault
13 ensued, Escobar did not strike [Petitioner] or threaten
14 him.

15 Near the end of the incident, Escobar grabbed the
16 knife and sustained cuts to his hand. During the
17 struggle over the knife, Escobar slipped and fell to the
18 floor. [Petitioner] stabbed him a final time in the leg,
19 ran out the front door, got into his car, and left.
20 Escobar, bleeding profusely, told one of Munoz's children
21 to call the police.

22 Escobar said he was stabbed or cut 25 times. He had
23 a number of scars as a result of the attack, which he
24 exhibited to the jury. He was in the hospital for five
25 days and was still suffering lingering effects from the
26 stabbing at the time of trial.

27 At the time of the incident, Escobar weighed 125
28 pounds. [Petitioner] weighed more than 200 pounds.

1

2 On the evening of November 4, 2009, Los Angeles
3 County Deputy Sheriff Marco Miranda came in contact with
4 [Petitioner], who was seated in the backseat of a patrol
5 car. Deputy Miranda understood that [Petitioner] had
6 driven to the station and had spoken with another deputy.
7 Deputy Miranda observed that [Petitioner] had no
8 bruising, swelling, or cuts to his face, arms, or upper
9 body. [Petitioner] had dried blood on his cheek and
10 dried and wet blood on his clothes and hands. Deputy
11 Miranda did not see any injuries to [Petitioner]'s hands.

12 After being advised of and waiving his [Miranda v.
13 Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694
14 (1966)] rights, [Petitioner] told the deputy that he
15 stabbed Escobar in self-defense. When Deputy Miranda
16 attempted to ask further questions, [Petitioner] became
17 uncooperative and said that was all he was going to say.
18 The interview ended. When conducting a later search of
19 the car [Petitioner] had driven to the station, Deputy
20 Miranda located a folding knife with bloodstains on the
21 blade.

22

23 Deputy Miranda also spoke to Escobar. Escobar said
24 that he and [Petitioner] were arguing when [Petitioner]
25 took out a knife and stabbed him in the arm.
26 [Petitioner] then stabbed him in the chest. Escobar did
27 not describe any other injuries. Deputy Miranda observed
28 both wounds. Although Deputy Miranda noticed only those

1 large wounds, he could not say whether Escobar had
2 suffered any other injuries due to the amount of blood on
3 Escobar's body.

4 **II. The Defense Case**

5 Twelve-year-old Maite Marquina lived in the
6 apartment with her mother, Sandra Munoz, [Petitioner],
7 Escobar, and two brothers. She saw Escobar threaten
8 [Petitioner] two or three times. During one such threat,
9 she observed Escobar with a knife. He was holding it up
10 to protect Munoz because [Petitioner] was yelling at her.
11 She also heard Escobar say he wished that [Petitioner]
12 would be struck by a car or attacked by dogs. Maite
13 acknowledged that she loved [Petitioner] and did not want
14 him to get in any trouble.

15 Leonel Guizar is [Petitioner]'s neighbor. They had
16 lived in the same apartment building for seven years. He
17 believed [Petitioner] to be a good man who never bothered
18 another neighbor. In February 2010, three months after
19 the November incident, Escobar and Munoz threatened to
20 beat Guizar because Guizar told Escobar to move a truck
21 out of the driveway. Guizar called the police. He
22 admitted that he told police that Munoz had threatened to
23 kill him and that the person who was with Munoz was bald.
24 Guizar conceded that Escobar is not bald. Nonetheless,
25 he was certain it was Escobar who threatened him.

26 Maria Ruelas has been [Petitioner]'s next door
27 neighbor for seven years and considers him a friend. She
28 opined that [Petitioner] is a peaceful man. She believed

1 Escobar to be an aggressive person. Two days before the
2 November incident, Ruelas was sweeping her patio. For no
3 reason, Escobar opened the door and called her a stupid
4 old lady. Afterwards, [Petitioner] and Munoz stepped
5 outside. Escobar cursed [Petitioner] and said he was
6 going to kill him or get a Long Beach gang to do it for
7 him.

8 Sotelo Garcia is acquainted with Escobar and
9 [Petitioner]. He had a conversation with Escobar after
10 what Garcia called the "accident," referring to the
11 stabbing. He later changed his statement and said they
12 spoke before the accident. Still later, he acknowledged
13 it was possible the encounter was after the accident.
14 Garcia approached Escobar because he appeared angry and
15 Garcia wanted to ascertain why. Escobar said he was very
16 bothered by the fact that [Petitioner] continued to live
17 in the home with Munoz. Garcia responded that it was
18 appropriate that Escobar was the one who left. (Escobar
19 did not return to the apartment after the stabbing.)
20 Escobar said that he wanted to kill [Petitioner]. When
21 Garcia asked why, Escobar did not answer.

22 Sandra Munoz has had a relationship with
23 [Petitioner] for seven years. She believes he is a
24 peaceful person. In approximately April 2009, she
25 entered into a romantic relationship with Escobar even
26 though she continued to live with [Petitioner].
27 According to Munoz, [Petitioner] was unaware of her
28 romance with Escobar. [Petitioner] respected Escobar as

1 a renter; Escobar was aggressive with [Petitioner],
2 saying often that he did not like him. On occasion,
3 while Munoz was arguing with [Petitioner], Escobar would
4 insert himself into the discussion, pull his knife, and
5 curse. Three months after Escobar began renting a
6 bedroom in the apartment, Munoz asked him to move into
7 the garage because he was violent, rude, and aggressive.

8 On November 9, five days after the stabbing, Munoz
9 contacted the police and informed them that Escobar was
10 threatening her. Later, Munoz corrected herself and said
11 the threat occurred before the November 4 stabbing. She
12 said Escobar told her that he would tell [Petitioner],
13 her children, and the neighbors she had AIDS if she did
14 not stop seeing [Petitioner]. Munoz acknowledged that
15 she had the AIDS virus, but she had not told anyone other
16 than her sister about her condition. Escobar knew she
17 had the AIDS virus because he and Munoz met at an AIDS
18 clinic.

19 About two weeks before the trial, Munoz went to a
20 Laundromat with Escobar. While there, Escobar told her
21 not to come to court or she would regret it. She did not
22 report the threat to police. She opined that Escobar was
23 an aggressive and violent person.

24 [Petitioner] said that on November 4, 2009, he was
25 living with Munoz and her three children. Escobar stayed
26 in the garage. That evening, Munoz called and asked him
27 to pick her up at the Laundromat. As [Petitioner] was
28 gathering his things, Escobar came into the kitchen.

1 [Petitioner] asked Escobar why he was inside, as
2 ordinarily Escobar did not come into the apartment during
3 night time hours. Escobar cursed and threatened to kill
4 him. At that point, Escobar "launched himself against
5 [Petitioner]." [Petitioner] noticed Escobar had
6 something shiny in his hand. Escobar struck him with his
7 forearm, breaking [Petitioner]'s glasses. [Petitioner]
8 grabbed Escobar and they struggled. Escobar reached for
9 something near his pocket and tried to open it, but
10 [Petitioner] prevented him from doing so. Escobar began
11 putting pressure under [Petitioner]'s chin and choking
12 him. [Petitioner] took out his knife and cut Escobar on
13 the arm to get Escobar off of him. [Petitioner] was
14 afraid because every day during the prior month Escobar
15 had threatened to kill him. [Petitioner] shouted at
16 Javier to call the police.

17 The men continued to struggle. [Petitioner] cut
18 Escobar several times; however, he did not know how many
19 wounds he inflicted. [Petitioner] had no idea how
20 Escobar came to have so many wounds, as he did not
21 intentionally stab him. [Petitioner] could not explain
22 Escobar's chest wound, saying he did not stab him there.
23 At some point, Escobar fell to the ground. [Petitioner]
24 denied stabbing him further. He ran across the street to
25 the police station. Later, he said he drove his car to
26 the station.

27 During the struggle, [Petitioner] thought Escobar
28 was going to kill him and the children. [Petitioner]

1 acknowledged that he was not stabbed or cut during the
2 incident.

3 When [Petitioner] drove to the police station, he
4 was in the midst of having a heart attack. He was
5 gasping for air. He told an officer that he had stabbed
6 Escobar in self-defense. After he told the officers he
7 was having a heart attack, they took pictures of him and
8 placed him into the backseat of a patrol car.
9 [Petitioner] said that no one at the station advised him
10 that he had a right to remain silent.

11 (Lodged Doc. 4 at 2-8 (footnote omitted).)

12 **STANDARD OF REVIEW**

13 Under 28 U.S.C. § 2254(d), as amended by the Antiterrorism
14 and Effective Death Penalty Act of 1996 ("AEDPA"):

15 An application for a writ of habeas corpus on behalf of
16 a person in custody pursuant to the judgment of a State
17 court shall not be granted with respect to any claim that
18 was adjudicated on the merits in State court proceedings
19 unless the adjudication of the claim – (1) resulted in a
20 decision that was contrary to, or involved an
21 unreasonable application of, clearly established Federal
22 law, as determined by the Supreme Court of the United
23 States; or (2) resulted in a decision that was based on
24 an unreasonable determination of the facts in light of
25 the evidence presented in the State court proceeding.

26 Under AEDPA, the "clearly established Federal law" that
27 controls federal habeas review of state-court decisions consists
28 of holdings of Supreme Court cases "as of the time of the

1 relevant state-court decision." Williams v. Taylor, 529 U.S.
2 362, 412, 120 S. Ct. 1495, 1523, 146 L. Ed. 2d 389 (2000).

3 Although a particular state-court decision may be both
4 "contrary to" and "an unreasonable application of" controlling
5 Supreme Court law, the two phrases have distinct meanings. Id.
6 at 391, 413. A state-court decision is "contrary to" clearly
7 established federal law if it either applies a rule that
8 contradicts governing Supreme Court law or reaches a result that
9 differs from the result the Supreme Court reached on "materially
10 indistinguishable" facts. Early v. Packer, 537 U.S. 3, 8, 123 S.
11 Ct. 362, 365, 154 L. Ed. 2d 263 (2002). A state court need not
12 cite or even be aware of the controlling Supreme Court cases, "so
13 long as neither the reasoning nor the result of the state-court
14 decision contradicts them." Id.

15 State-court decisions that are not "contrary to" Supreme
16 Court law may be set aside on federal habeas review only "if they
17 are not merely erroneous, but 'an unreasonable application' of
18 clearly established federal law, or based on 'an unreasonable
19 determination of the facts' (emphasis added)." Id. at 11. A
20 state-court decision that correctly identified the governing
21 legal rule may be rejected if it unreasonably applied the rule to
22 the facts of a particular case. Williams, 529 U.S. at 406-08.
23 To obtain federal habeas relief for such an "unreasonable
24 application," however, a petitioner must show that the state
25 court's application of Supreme Court law was "objectively
26 unreasonable." Id. at 409-10. In other words, habeas relief is
27 warranted only if the state court's ruling was "so lacking in
28 justification that there was an error well understood and

1 comprehended in existing law beyond any possibility for
2 fairminded disagreement." Harrington v. Richter, 562 U.S. ____,
3 131 S. Ct. 770, 786-87, 178 L. Ed. 2d 624 (2011).

4 Here, Petitioner raised all three grounds for relief on
5 direct appeal. (Lodged Doc. 1.) The court of appeal denied
6 claims two and three on the merits and as to claim one –
7 Petitioner's Doyle-error claim – found that any error was
8 harmless. (Lodged Doc. 4 at 8-9.) Petitioner asserted the same
9 arguments in his Petition for Review; the California Supreme
10 Court summarily denied it. (Lodged Docs. 5, 6.) Thus, the Court
11 "looks through" the state supreme court's silent denial to the
12 last reasoned decision as the basis for the state court's
13 judgment. See Ylst v. Nunnemaker, 501 U.S. 797, 803-04, 111 S.
14 Ct. 2590, 2595, 115 L. Ed. 2d 706 (1991) (holding that California
15 Supreme Court, by its silent denial of petition for review,
16 presumably did not intend to change court of appeal's analysis);
17 see also Berghuis v. Thompkins, 560 U.S. ____, 130 S. Ct. 2250,
18 2259, 176 L. Ed. 2d 1098 (2010) (when state supreme court denies
19 discretionary review of decision on direct appeal, that decision
20 is relevant state-court decision for purposes of AEDPA's standard
21 of review). Because the court of appeal adjudicated Petitioner's
22 claims on the merits, the Court reviews them under the
23 deferential AEDPA standard of review. See Richter, 131 S. Ct. at
24 784.

25 DISCUSSION

26 I. Any Doyle error was harmless

27 Petitioner argues in ground one that his due process rights
28 were violated when the trial court allowed the prosecutor to

1 comment on his silence in response to some of Officer Miranda's
2 questions about the stabbing. Although Petitioner apparently
3 voluntarily gave a statement to police asserting that he had
4 stabbed Escobar in self-defense, he subsequently refused to
5 answer any of the police's questions concerning details of what
6 had happened.

7 **A. Background Facts**

8 Before allowing into evidence testimony regarding
9 Petitioner's silence, the trial court heard arguments outside the
10 presence of the jury as to its admissibility. (Lodged Doc. 7, 3
11 Rep.'s Tr. at 908-18.) The trial court concluded that it was
12 admissible (id. at 913-15), and Officer Miranda then testified in
13 front of the jury as follows:

14 Q. Now, the Defendant admitted to you that he stabbed
15 the - Mr. Escobar, the victim. And did he - and
16 then he said that it was in self-defense; correct?

17 A. Correct.

18 Q. Did you ask him further details about the self-
19 defense that he claimed?

20 A. I attempted to ask him.

21 Q. What happened?

22 A. He just became uncooperative, and he said that's
23 all he's gonna tell me.

24 Q. So the Defendant didn't tell you any other
25 information about how he defended himself?

26 A. Correct.

27 Q. At that time did you ask him any further questions?

28 A. No.

1 Q. Did the Defendant ever tell you anything about Mr.
2 Escobar -

3 [Defense Counsel]: Objection. Miranda.

4 Q. [Prosecutor]: - having a knife?

5 A. No.

6 THE COURT: I'm sorry?

7 [Defense Counsel]: Objection. Miranda.

8 THE COURT: You mean during this conversation, after the
9 Miranda rights; correct?

10 [Prosecution]: After the Miranda rights, correct.

11 THE COURT: Overruled.

12 THE WITNESS: No.

13 Q. [Prosecutor]: Did the Defendant ever tell you
14 anything about -

15 [Defense Counsel]: Objection. May we approach?

16 THE COURT: No. Denied.

17 Proceed.

18

19 Q. Did the Defendant ever tell you anything about Mr.
20 Escobar striking him or using any force against
21 him?

22 A. No.

23 Q. When you were talking to the Defendant and
24 observing him in the car, did he ever complain of
25 any injuries to him, meaning the Defendant?

26 A. He did not.

27 (Id. at 965-66.)

28 The prosecutor also questioned Petitioner on cross-