

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

HELEN SPRY,  
Petitioner,  
v.  
D. K. JOHNSON, Warden,  
Respondent.

Case No. CV 16-423 GW (MRW)

**ORDER ACCEPTING FINDINGS  
AND RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court reviewed the petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Petitioner did not file any written objections to the report. The Court accepts the findings and recommendation of the Magistrate Judge.

\* \* \*

The Court notes limited circumstances (not mentioned in the original Report) in which a conviction that rests on uncorroborated accomplice testimony may implicate due process concerns under the federal constitution. As a general

1 rule, the Constitution does not require corroboration of an accomplice’s testimony.  
2 However, a federal constitutional issue may arise if a prisoner can show an  
3 arbitrary deprivation of a “state law entitlement” such as a procedural rule  
4 addressing specific evidence like accomplice corroboration. Laboa v. Calderon,  
5 224 F.3d 972, 979 (9th Cir. 2000); Hicks v. Oklahoma, 447 U.S. 343, 346 (1980).  
6 Also, a criminal conviction cannot rely solely on an accomplice’s uncorroborated  
7 statement that is “incredible or insubstantial on its face.” Laboa, 224 F.3d at 979  
8 (quoting United States v. Necoechea, 986 F.2d 1273, 1282 (9th Cir. 1993)  
9 (analyzing sufficiency of evidence of conviction)).

10 Petitioner did not advance any type of Laboa – Hicks claim on direct appeal  
11 or in this Court. Nor could she. The state appellate court reasonably – and non-  
12 arbitrarily – determined that the provisions of the accomplice corroboration rule  
13 simply did not apply to her co-defendants’ jailhouse statements to each other.  
14 Those statements were not “given under suspect circumstances” and were  
15 “declarations against penal interest.” (Docket # 21-17 at 18.) As a matter of state  
16 law, they were “considered sufficiently reliable to require no corroboration” or a  
17 derivative instruction to the jury to view the statements with caution. (Id. (citing  
18 People v. Brown, 31 Cal. 4th 518, 555 (2003)).) The state court’s analysis was not  
19 an arbitrary application of state law that unfairly deprived Petitioner of any right.  
20 Laboa, 224 F.3d at 979.

21 Further, Petitioner cannot demonstrate that any error was anything other than  
22 harmless here. Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) (evidentiary or  
23 instructional error cannot lead to habeas relief “unless it results in ‘actual  
24 prejudice’” that had a “substantial and injurious effect or influence in determining  
25 the jury’s verdict”).

26 As noted in the appellate decision, the accomplices’ jailhouse statements  
27 established that Petitioner was the getaway driver and a knowledgeable participant  
28 in the gang’s mission. Those statements were amply corroborated by other

1 evidence at trial. Petitioner was arrested behind the wheel of the car shortly after  
2 the killing. She had been in the company of other gang members in the period  
3 before the killing. Petitioner “could not have overlooked” the fact that her  
4 passengers possessed a long rifle before the shooting and threw it out a window  
5 shortly after. Moreover, Petitioner was identified as a possible contributor of DNA  
6 recovered from the murder weapon. (Docket # 21-17 at 5, 17.)

7 Because this evidence corroborated the co-defendants’ statements about  
8 Petitioner, any error in failing to advise the jury about the corroboration  
9 requirement was surely harmless. Brecht, 507 U.S. 637. That conclusion  
10 necessarily means that the accomplice statements were not “incredible or  
11 insubstantial.” Laboa, 224 F.3d at 979. The Court finds no basis for habeas relief  
12 on the corroboration instruction claim.

13 \* \* \*

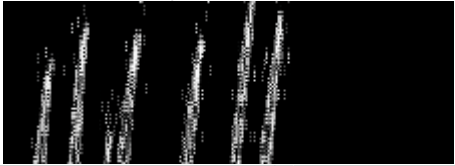
14 IT IS ORDERED that Judgment be entered denying the petition and  
15 dismissing this action with prejudice.

16  
17  
18  
19 DATE: February 14, 2017



20 HON. GEORGE H. WU  
21 UNITED STATES DISTRICT JUDGE

22 Presented by:



25 HON. MICHAEL R. WILNER  
26 UNITED STATES MAGISTRATE JUDGE