



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

CUAUHTEMOC A. REYES,)	Case No. CV 11-0531-MLG
)	
Petitioner,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
DOMINGO URIBE, Jr., Warden,)	
)	
Respondent.)	
)	

I. Background

A. Procedural History

On January 30, 2007, Petitioner Cuauhtemoc Reyes was convicted by an Orange County Superior Court jury of kidnaping for extortion (Cal. Penal Code § 209(a)). (Clerk's Transcript ("CT") at 706-708, 904, 912.) Petitioner was sentenced to life in prison with the possibility of parole. (CT at 1112-1114.)

Petitioner appealed his conviction to the California Court of Appeal, arguing, *inter alia*, that his due process rights were violated when the trial court admitted into evidence, over

1 Petitioner's objection, a lock pick set found during the execution
2 of a search warrant at his home. (Lodgment 3.) The court of appeal
3 affirmed Petitioner's conviction in a written opinion on the merits.
4 (Lodgment 6.) Petitioner filed a petition for review in the
5 California Supreme Court, raising the same claims he had presented
6 in his earlier appeal, which was summarily denied. (Lodgments 7 & 8.)

7 On April 6, 2011, Petitioner filed the current petition for writ
8 of habeas corpus, raising the same due process claim involving the
9 lock pick set presented to the state courts. (Pet. at 5.) Respondent
10 has filed an answer and Petitioner has filed a traverse.¹

11 **B. Facts**

12 The underlying facts, which are supported by the trial record,
13 are taken essentially verbatim from the unpublished opinion of the
14 California Court of Appeal. *People v. Cuauhtemoc Agustin Reyes, et*
15 *al.*, No. G038778 (Cal.App. 4th Dist., November 2, 2009) (Lodgment 6).

16 Around 9:00 p.m. on November 16, 2001, Farsheed Atef had just
17 left an electronics store in Fountain Valley. As he placed his
18 purchases in the trunk of his car, he noticed a white van parked in
19 the adjacent stall with its door open. A man approached Atef, asking
20 if he would like to view merchandise in the van and, when Atef
21 rebuffed him, the man and an accomplice tried to abduct him. Atef
22 broke free after a struggle and ran, yelling for help. The occupants
23 of a silver, two-door Honda pulled alongside to offer their aid, and
24 Atef jumped into the car through an open passenger window. The Honda
25 sped off.

26 Atef realized that he had been set up when his would-be rescuers

27
28 ¹ The parties have consented, pursuant to 28 U.S.C. § 636(c), to
the exercise of jurisdiction by the undersigned Magistrate Judge.

1 ignored his pleas to take him to a police station and instead turned
2 down a deserted road. Atef kicked the steering wheel, causing the
3 Honda to veer and collide with a pole. The white van approached and
4 parked behind the Honda. Atef escaped from the Honda and tried to
5 flee but two men tackled him to the ground. They forced him into the
6 back of the van, blindfolded him, and took his wallet and keys.

7 Despite the blindfold, Atef saw that one of the men from the
8 Honda had joined the two in the van, which began traveling south on
9 the 405 freeway. The van left the freeway after about 10 minutes and
10 pulled into a parking lot. Another man, whom Atef later identified
11 as Arthur Zavala, entered the van and began screaming that Atef had
12 stolen money from someone and they were "here to get it back."² The
13 van then drove to the parking lot of a Travelodge motel, where Zavala
14 threatened to harm Atef and his family if he did not cooperate.

15 The men took Atef to a room in the motel and told him that he
16 would be held until he withdrew \$80,000 from his account the next
17 day. Atef denied that he had that much money in his account and
18 stated that he believed that Tamraz was behind the kidnaping. Zavala
19 twice unsuccessfully attempted to verify the balance in Atef's bank
20 account, punching Atef in the head after each failed attempt. The
21 next morning, Zavala ordered Atef to obtain his business account
22 number from his brother, Saeed. Zavala called the bank and learned
23 that Atef's account balance was only \$44,000.

24 Zavala told Atef that they were taking him to the bank to
25 withdraw the money, and if he did not comply, they would frame him

26
27 ² Atef testified at trial that he ran a computer consulting
28 business in Tustin and that, some time before the kidnaping, a former
account manager, Anthony Tamraz, left the company on "bad terms," and
had filed an \$80,000 civil suit against Atef.

1 for bank robbery. Zavala instructed Atef to write a note on an
2 envelope stating, "I'm here to rob the bank. I hold anthrax in an
3 envelope, so do not scream, and put money in a bag." Zavala furnished
4 Atef with an envelope containing white powder. Zavala instructed Atef
5 that, if he could not withdraw the entire \$44,000 in cash, he should
6 get a cashier's check in the name of "John Smith" for the balance.

7 After learning from the teller that he could only withdraw
8 \$10,000 in cash, Atef obtained a cashier's check made out to "John
9 Smith" for the rest. Attempting to arouse suspicion, he wrote
10 "Anthony Tamraz Newport Travelodge" at the top of the cash receipt
11 and told the teller to provide the ticket "if anyone asks any
12 questions." Atef left the bank and spotted a police car in the
13 parking lot, but the patrol car left. Atef did not see the kidnapers'
14 white van. Meanwhile, the teller had called the police after noticing
15 that Atef remained in the parking lot for 15 or 20 minutes. The
16 police vehicle returned and Atef reported to the officer what had
17 happened to him.

18 Investigators discovered that Petitioner Reyes had used an
19 expired driver's license to rent the Travelodge room around 8:30 p.m.
20 on the night of the kidnaping, about a half-hour before Atef was
21 abducted. The address on Reyes's expired driver's license led police
22 to a post office box at a Newport Beach company named Commercial Mail
23 Receiving Agency. In speaking with an employee there, the police
24 learned Reyes might have a cellular phone account with AT&T Wireless
25 and with that information were able to obtain a search warrant for
26 cell phone records which revealed Reyes's current address and more
27 than 50 calls between Reyes's phone and Zavala's phone during the
28 kidnaping. Cell tower records placed Reyes along the route Atef

1 traveled on the day of the kidnaping and at or near the Travelodge
2 when the room was rented as well as the bank where Atef was taken to
3 the bank the next day. Zavala's phone records showed that he called
4 both Atef's business and bank during the kidnaping. Reyes cancelled
5 his cell phone account a few days before police arrested him in
6 December 2007.

7 The police apprehended Reyes and Derek Howard at Reyes's home.
8 Howard's cell phone records and calls to and from Reyes placed him
9 near the scene of the kidnaping and along the route Atef traveled
10 earlier in the day. Searching a cabinet in Reyes's kitchen, the
11 police found a photographic proof sheet and 35-millimeter negatives
12 that included photos of Atef as well as his residence and business.
13 The police found a 35-millimeter camera and lens in Reyes's closet.
14 They also found a lock pick set and photographs of Zavala in the
15 kitchen. Elsewhere in the apartment, they discovered a black bag
16 containing two hand-held radios and the paperwork for a police
17 scanner. They also found a parabolic microphone and headset listening
18 device, an item described as a "scope," and a business card for
19 "Fox's Spy Outlet," advertising a specialization in stun guns,
20 protective sprays and surveillance equipment. Tucked in a day planner
21 in a cubby hole in the bedroom, police found Reyes's expired driver's
22 license and a Disneyland identification card.³ A backpack in the
23 dining room contained Reyes's cell phone, pager, and his current
24 driver's license. The police also found Howard's driver's license on
25 the living room couch and his cell phone on the coffee table.

26 The police arrested Arthur Zavala at gunpoint at his apartment

27
28 ³ The clerk at the Travelodge motel had noted on Reyes's room
registration card that he worked at Disneyland.

1 after he tried to escape when they announced they had a warrant for
2 his arrest. Atef identified Zavala in a photo lineup as the kidnaper
3 who had punched him several times and who took charge of obtaining
4 his financial information and funds from his bank. Atef also
5 identified a man named David Vargas as one of the two men who first
6 approached him from the white van and tried to abduct him. He
7 identified Robert Cadavas as one of the men guarding him in the motel
8 room. DNA evidence recovered from the motel room matched Vargas and
9 Cadavas. Vargas and Cadavas pleaded guilty to simple kidnaping before
10 trial in exchange for eight-year prison terms. Howard also pleaded
11 guilty to simple kidnaping and received a one-year jail term.

12 Reyes's defense at trial was that Howard had set him up by using
13 his cell phone and the other items recovered at Reyes's apartment,
14 including falsely registering the motel room in Reyes's name. Reyes's
15 handwriting expert testified that the signature on the Travelodge
16 registration form was "most likely" someone else's, although the
17 expert acknowledged that it was "possible" that Reyes had signed the
18 form.

19

20 **II. Standard of Review**

21 Under the Antiterrorism and Effective Death Penalty Act of 1996
22 ("AEDPA"), federal habeas corpus relief is available to state
23 prisoners who are in custody "in violation of the Constitution or
24 laws or treaties of the United States." 28 U.S.C. § 2254(a). To
25 establish a right to relief, a petitioner must show that the state's
26 highest court rejected the petitioner's claim on the merits, and that
27 this rejection was "contrary to, or involved an unreasonable
28 application of, clearly established Federal law, as determined by the

1 Supreme Court of the United States," or was "based on an unreasonable
2 determination of the facts in light of the evidence presented in the
3 State court proceeding." *Id.* § 2254(d); *Harrington v. Richter*, ---
4 U.S. ---, 131 S.Ct. 770, 783-84 (2011).

5 It is not enough that a federal court conclude "in its
6 independent judgment" that the state court decision is incorrect or
7 erroneous. *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004) (quoting
8 *Woodford v. Visciotti*, 537 U.S. 19, 24-25 (2002) (per curiam)). "The
9 state court's application of clearly established law must be
10 objectively unreasonable." *Lockyer v. Andrade*, 538 U.S. 63, 75
11 (2003); see also *Renico v. Lett*, --- U.S. ---, 130 S.Ct. 1855, 1865
12 (2010). AEDPA imposes a "'highly deferential standard for evaluating
13 state-court rulings, which demands that state-court decisions be
14 given the benefit of the doubt." *Bell v. Cone*, 543 U.S. 447, 455
15 (2005) (quoting *Woodford*, 537 U.S. at 24); *Vasquez v. Kirkland*, 572
16 F.3d 1029, 1035 (9th Cir. 2009).

17 Habeas relief is unavailable if "fairminded jurists could
18 disagree" about the correctness of the state court decision. *Richter*,
19 131 S.Ct. at 786 (quoting *Yarborough*, 541 U.S. at 664) (internal
20 quotation marks omitted). For habeas relief to be granted, "a state
21 prisoner must show that the state court's ruling on the claim being
22 presented in federal court was so lacking in justification that there
23 was an error well understood and comprehended in existing law beyond
24 any possibility for fairminded disagreement." *Richter*, 131 S.Ct. at
25 786-87.

26 The claim raised in the instant petition was presented to the
27 California Supreme Court, but that court did not issue a reasoned
28 decision. (Lodgment 8.) Accordingly, this Court must "look through"

1 the unexplained California Supreme Court decision to the last
2 reasoned decision as the basis for the state supreme court judgment.
3 *See Mendez v. Knowles*, 556 F.3d 757, 767 (9th Cir. 2009) (citing *Ylst*
4 *v. Nunnemaker*, 501 U.S. 797, 803-04 (1991)). The California Court of
5 Appeal, in a reasoned opinion on the merits, rejected Petitioner's
6 claim of error. (Lodgment 6.) Therefore, this Court will consider the
7 reasoning of the California Court of Appeal to determine whether the
8 California Supreme Court's decision is contrary to, or an
9 unreasonable application of, clearly established federal law.

10
11 **III. Admission at Trial of Evidence of a Lock Pick Set Did Not**
12 **Violate Petitioner's Due Process Rights**

13 As noted, Petitioner contends that the admission into evidence
14 of a lock pick set found in his apartment was fundamentally unfair
15 and violated his right to due process. (Pet. at 5; Mem. of P & A at
16 11-20.) However, the state court's rejection of this claim was
17 neither contrary to nor an unreasonable application of clearly
18 established law. *See* 28 U.S.C. § 2254(d).

19 At trial, Petitioner objected to the admission of the lock pick
20 set that had been found in his home. He argued that it was not
21 relevant because there was no indication that a lock pick set had
22 been used during the kidnaping and that it was improper character
23 evidence. (Reporter's Transcript ("RT") at 522-523.) The prosecutor
24 argued that the lock pick set, along with the photographs,
25 surveillance equipment, and other evidence found in Reyes's
26 apartment, were being used to show Reyes's ability to facilitate the
27 kidnaping, and not for any improper purpose. (RT at 523.)

28 The trial court held that the challenged evidence was relevant

1 to the issue of Reyes's ability to facilitate the crime and was not
2 being used to show evidence of other crimes or Reyes's propensity to
3 commit crimes. (RT at 705-706.) The lock pick set was admitted for
4 the limited purpose stated by the prosecutor. (Id.)

5 In rejecting Petitioner's claim of error, the California Court
6 of Appeal first noted that California courts have found that the
7 possession of burglary tools, whether used in the commission of a
8 crime or not, is properly admissible as demonstrating a defendant's
9 felonious intent to commit a burglary. (Lodgment 6 at 13.) In this
10 case, the court of appeal noted the similarity between possession of
11 burglary tools and Petitioner's possession of the lock pick set:

12 As the prosecutor argued, the tool set was similarly
13 relevant to Petitioner's intent to kidnap the victim because,
14 like "[t]he high tech scope as well as the listening device
15 that was found [and] the walkie-talkies, the lock pick is just
16 another tool of the trade that can be used for kidnapping a
17 person if you need to get into a room or a vehicle that they
18 are in."

19 Unlike a gun, with its many lawful uses, possession of a
20 lock pick set bears rationally on Petitioner's preparation and
21 intent to commit a crime. Consequently, admission of the set
22 did not constitute unlawful disposition evidence. Petitioner
23 does not suggest the trial court failed to keep the prosecutor
24 on a short leash to avoid suggesting the lock pick set
25 connected Petitioner to any other crimes or that it showed he
26 was a person of bad character. Accordingly, we discern no
27 error in the admission of the evidence.

28 (Lodgment 6 at 13-14.) (Citations omitted.)

1 To the extent that Petitioner is claiming that the trial court
2 violated California state law in admitting the lock pick set, this
3 claim fails to state a cognizable federal habeas corpus claim. A
4 federal court may issue a writ of habeas corpus only on the ground
5 that the petition is in custody in violation of the Constitution or
6 laws of the United States. *Wilson v. Corcoran*, 562 U.S. ----, ----,
7 131 S.Ct. 13, 15, 178 L.Ed.2d 276 (2010) (per curiam) (quoting 28
8 U.S.C. § 2254(a)); see also *Estelle v. McGuire*, 502 U.S. 62, 67
9 (1991) (“[f]ederal habeas corpus relief does not lie for errors of
10 state law”) (citing *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990)). In
11 this regard, the Supreme Court has never clearly held that “admission
12 of irrelevant or overtly prejudicial evidence constitutes a due
13 process violation sufficient to warrant issue of the writ.” *Holley*
14 *v. Yarborough*, 586 F.3d 1091, 1101 (9th Cir. 2009).

15 Even so, the erroneous admission of evidence may violate due
16 process, but only when “there are no permissible inferences the jury
17 may draw from the evidence.” *Boyde v. Brown*, 404 F.3d 1159, 1172 (9th
18 Cir. 2005) (quoting *Jammal v. Van de Kamp*, 926 F.2d 918, 920 (9th
19 Cir. 1991)). Even then, evidence must “be of such quality as
20 necessarily prevents a fair trial.” *Jammal*, 926 F.2d at 920. The due
21 process inquiry on federal habeas review is whether the admission of
22 evidence was arbitrary or so prejudicial that it rendered the trial
23 fundamentally unfair. See *Estelle*, 502 U.S. at 67; *Walters v. Maass*,
24 45 F.3d 1355, 1357 (9th Cir. 1995).

25 Here, there were permissible inferences to be drawn from the
26 challenged evidence. Even though a lock pick set was not used in the
27 kidnaping, the jury could reasonably infer Petitioner’s preparation
28 and intent to commit the crime based upon its presence in his

1 apartment. The evidence presented to the jury showed that the
2 kidnaping was planned and coordinated and that various items, such
3 as those found in Petitioner's apartment, were procured to facilitate
4 the kidnaping. As noted by the court of appeal, the evidence of the
5 lock pick set found in Petitioner's apartment, along with other
6 various items that could be used to facilitate a kidnaping, such as
7 hand-held radios, paperwork for a police scanner, a scope, and a
8 portable parabolic microphone and headset listening device, were
9 relevant to show that Petitioner intended to commit and prepared for
10 the kidnaping. See Cal. Evidence Code § 1101(b) ("Nothing in this
11 section prohibits ... admission of evidence ... relevant to prove ...
12 intent, preparation, plan, knowledge, identity...") The evidence was
13 also relevant to rebut Petitioner's defense that he was uninvolved
14 in the crime and that his friend, Derek Howard, had used his cell
15 phone and identification without his knowledge to perpetrate the
16 kidnaping. Thus, the discovery of the lock pick set, along with other
17 items that could be used to facilitate the kidnaping, in Petitioner's
18 apartment, was relevant to disprove Petitioner's defense that Howard
19 had committed the crime without his knowledge. There was no due
20 process violation.

21 Finally, even assuming a due process violation, any error was
22 harmless given the overwhelming evidence of Petitioner's guilt. See
23 *Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993). The evidence of
24 the lock pick set was merely one piece of a strong case in which the
25 prosecution presented overwhelming evidence linking Petitioner to the
26 kidnaping. Petitioner's cell phone records showed that he made more
27 than 50 calls during the time of the kidnaping to Zavala, whom the
28 victim identified as being one of the men who kidnaped him. (RT at

1 364-366.) Cell tower records also showed that Petitioner was in close
2 proximity to the victim immediately prior to and during the time of
3 the kidnaping. (RT 168-197.) The Travelodge hotel records showed that
4 Petitioner rented the room around 8:30 p.m. on the night of the
5 kidnaping, only 30 minutes before the victim was abducted. The
6 expired driver's license and Disneyland identification card used to
7 rent the room were both found hidden in his apartment. (RT 357-358,
8 416, 445-449, 460-465, 502-509, 562-563, 566, 570, 597-598, 605-607.)
9 Police also found 35-millimeter negatives of the victim and his home
10 and business in Petitioner's apartment, as well as a 35-millimeter
11 camera, paperwork for a police scanner, and various items of
12 surveillance equipment. Also found was a business card for "Fox's Spy
13 Outlet," advertising a specialization in stun guns, protective
14 sprays, and surveillance equipment. (RT 442-443, 444, 445, 452-456,
15 470-473, 503, 566.) In addition, Derek Howard's cell phone records
16 and calls to and from Petitioner placed him near the scene of the
17 kidnaping and along the route the victim traveled earlier in the day.
18 (RT 192-201.) Police apprehended both Petitioner and Derek Howard
19 together at Petitioner's apartment. (RT 367-370, 434-445, 600.)

20 Given the overwhelming evidence linking Petitioner to the crime,
21 any possible error in admitting the lock pick set cannot be said to
22 have had a substantial and injurious effect on the jury's verdict.
23 *Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993) (trial type error
24 must have had a "substantial and injurious effect" upon the verdict
25 in order to justify federal habeas relief); *see also Fry v. Plilar*,
26 551 U.S. 112, 121-122 (2007). Accordingly, Petitioner is not entitled
27 to habeas relief on this claim.

28 //

1 **IV. Order**

2 The petition for writ of habeas corpus is **DENIED**. In addition,
3 because Petitioner cannot make a colorable claim that jurists of
4 reason would find debatable or wrong the decision denying the
5 petition, Petitioner is not entitled to a Certificate of
6 Appealability. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *Slack*
7 *v. McDaniel*, 529 U.S. 473, 484 (2000).

8
9 DATED: August 8, 2011



10
11
12 Marc L. Goldman
United States Magistrate Judge