



1 determination of those portions of the [R&R] to which objection is made.”” *Thomas v. Arn*,  
2 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)); *Wang v. Masaitis*, 416 F.3d  
3 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th  
4 Cir.2003) (*en banc*). To the extent that no objection has been made, arguments to the  
5 contrary have been waived. Fed. R. Civ. P. 72; *see* 28 U.S.C. § 636(b)(1) (objections are  
6 waived if they are not filed within fourteen days of service of the R&R), *see also* *McCall v.*  
7 *Andrus*, 628 F.2d 1185, 1187 (9<sup>th</sup> Cir. 1980) (failure to object to Magistrate's report waives  
8 right to do so on appeal); Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell*  
9 *v. United States Dist. Court*, 501 F.2d 196, 206 (9<sup>th</sup> Cir. 1974) (when no timely objection is  
10 filed, the court need only satisfy itself that there is no clear error on the face of the record in  
11 order to accept the recommendation)).

12 The parties were sent copies of the R&R and instructed that, pursuant to 28 U.S.C.  
13 § 636(b)(1), they had 14 days to file written objections. *See also*, Fed. R. Civ. P. 72 (party  
14 objecting to the recommended disposition has fourteen (14) days to file specific, written  
15 objections). The Petitioner sought and was granted an extension of time. He filed his  
16 Objection on July 27, 2012. The Court has considered the Objection and the documents  
17 considered by the Magistrate Judge, which are the Second Amended Petition, the Limited  
18 Answer and Answer on the Motion to Suppress.

## 19 **OBJECTIONS**

20 The Petitioner asserts the Magistrate Judge should have concluded the Arizona  
21 appellate court’s application of Supreme Court law was objectively unreasonable when it  
22 found the trial court did not err in denying his request to disqualify and remove jurors  
23 Strassman and Bracamonte for being exposed to extraneous evidence during the trial. The  
24 Petitioner refers to media coverage about defendant’s attempted escape during the trial.

25 As the Magistrate Judge’s R&R reflects the state appellate court made a searching  
26 inquiry into the factual background of this claim, Claim 1(b)/3(a). The trial court took steps  
27 to individually question each juror that was exposed to the media about the Petitioner, and  
28

1 neither Strassman nor Bracamonte expressed any partiality and assured the judge they could  
2 decide the case based on the trial evidence alone. The appellate court found that the trial  
3 judge was best suited to assess the jurors' credibility when they affirmed they could set aside  
4 the news coverage, which was primarily limited to information about his attempted escape,  
5 and decide the case solely on the trial evidence. *See Murphy v. Florida*, 421 U.S. 794, 799  
6 (1975) (explaining a juror need not be completely ignorant of the facts nor totally impartial,  
7 it is enough if a juror can set this aside and render the verdict based solely on the trial  
8 evidence). The Court agrees with the Magistrate Judge's conclusion that the Arizona Court  
9 of Appeal's denial of this claim was not an objectively unreasonable application of Supreme  
10 Court law. (R&R at 11-12.)

## 11 CONCLUSION

12 After a *de novo* review of the issues raised in Defendant's objections, this  
13 Court agrees with the findings of fact and conclusions of law made by the Magistrate Judge  
14 in his R&R for dismissing the Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. §  
15 2254. The Court adopts it, and for the reasons stated in the R&R, the Court dismisses the  
16 Petition. **Accordingly,**

17 **IT IS ORDERED** that after a full and independent review of the record, in respect  
18 to the objections, the Magistrate Judge's Report and Recommendation (Doc. 31) is accepted  
19 and adopted as the findings of fact and conclusions of law of this Court.

20 **IT IS FURTHER ORDERED** that Second Amended Petition for Writ of Habeas  
21 Corpus, Pursuant to 28 U.S.C. § 2254 (Doc. 24) is DISMISSED.

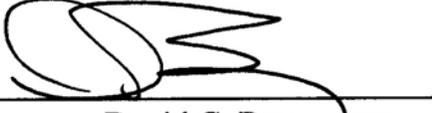
22 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment  
23 accordingly.

24 **IT IS FURTHER ORDERED** that the Motion for Certificate of Appealability  
25 (Doc. 36) is DENIED.

26 **IT IS FURTHER ORDERED** that Pursuant to Rule 11(a) of the Rules Governing  
27 Section 2254 Cases, in the event Petitioner files an appeal, the Court declines to issue a  
28

1 certificate of appealability and denies leave to proceed *in forma pauperis* on appeal because  
2 the Petitioner has not made a substantial showing of a denial of a constitutional right.

3 DATED this 10<sup>th</sup> day of September, 2012.

4  
5  
6   
7 David C. Bury  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28