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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Richard Jo Carrillo,	)	
	)	CV-14-2325-TUC-DCB
Petitioner,	)	
v.	)	
	)	
Charles L. Ryan, et al.,	)	<b>ORDER</b>
	)	
Respondents.	)	
	)	
_____	)	

This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B) and the local rules of practice of this Court for a Report and Recommendation (R&R) on the Petition for Writ of Habeas Corpus (Doc. 1). Before the Court is the Magistrate Judge’s Report and Recommendation (Doc. 20). The Magistrate Judge recommends to the Court that the Petition for Writ of Habeas Corpus may be denied and the matter dismissed. The Petitioner filed Objections (Doc. 21).

**STANDARD OF REVIEW**

When objection is made to the findings and recommendation of a magistrate judge, the district court must conduct a de novo review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

**PETITIONER’S OBJECTIONS**

Petitioner abandons Grounds I and IV for purposes of raising them in the Objections and therefore the R&R is adopted, without further

1 discussion here, as the findings and conclusions of this Court on Grounds  
2 I and IV.

3 Petitioner raises again Grounds II and III in his Objections, but  
4 the objections are devoid of any new legal argument or evidence.  
5 Basically his objections remain with reference to Ground II that he was  
6 deprived of a fair trial based on juror bias and the failure of the trial  
7 court to grant a mistrial. He argues that the jury pool was improperly  
8 aware of his prior DUI convictions and that it was impossible to properly  
9 sanitize his trial from preconceived notions and bias. With reference  
10 to Ground III, Petitioner objects to the use of a blood sample taken at  
11 the hospital without his permission as evidence during the trial. (Doc.  
12 21 at 3.) This was Petitioner's argument before the Magistrate Judge  
13 when the R&R was issued with no new legal or factual argument contained  
14 in the Objections.

#### 15 **DISCUSSION**

16 Petitioner was convicted in Cochise County Superior Court in March  
17 2011 of multiple counts of Aggravated DUI and was sentenced to an 11-year  
18 term of imprisonment. Petitioner raised four grounds for relief in his  
19 habeas petition: Ground One, Petitioner alleges that he was denied  
20 effective assistance of counsel in violation of the Sixth Amendment;  
21 Ground Two, Petitioner alleges that a warrantless search was conducted  
22 during the investigation of the underlying criminal case in violation of  
23 the Fourth Amendment; Ground Three, Petitioner claims that his Fourteenth  
24 Amendment right to due process was denied when the trial court allowed  
25 the jury to hear evidence of Petitioner's prior convictions and failed  
26 to grant a mistrial; and, Ground Four, Petitioner claims that his Fifth,  
27 Sixth, and Fourteenth Amendment rights were violated when police officers

1 failed to read him his rights as required by *Miranda v. Arizona*, 384 U.S.  
2 436 (1966).

3 The Court finds that the Report and Recommendation is thorough and  
4 well-considered. The Respondents have no Objections to the Report and  
5 Recommendation. Petitioner's Objections reiterate all of the original  
6 arguments as to Grounds II and III, with no additional specific examples  
7 of error.

8 The R&R was resolved without a hearing and this Court agrees that  
9 none was required. The Court also agrees that a copy of the transcript  
10 of the voir dire proceedings was critical to a complete resolution of  
11 Petitioner's complaints. The R&R properly found that Grounds I, II and  
12 IV may be denied and dismissed as procedurally defaulted. This Court  
13 also agrees that Ground III may be denied as either procedurally  
14 defaulted (R&R at 15) or on the merits. The Court will adopt the R&R as  
15 it resolves Ground III on the merits. (R&R at 15 - 28.) As to the  
16 Magistrate Judge's procedural default finding on Grounds I (R&R at 9),  
17 II (R&R at 10) and IV (R&R at 29), Petitioner has not established cause  
18 and prejudice or a fundamental miscarriage of justice to overcome the  
19 defaults. The Objections add nothing new for this Court to consider.

20 The Court will adopt the R&R in its entirety and will deny the  
21 habeas petition on all claims.

#### 22 CONCLUSION

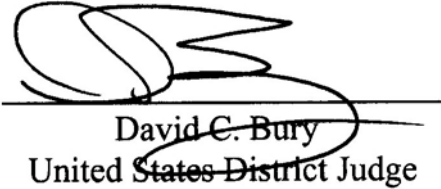
23 Accordingly, after conducting a de novo review of the record,

24 **IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation  
25 (Doc. 20) in its entirety as its findings of fact and conclusions of law.  
26 The Objections (Doc. 21) raised by the Petitioner are **OVERRULED**.

1           **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus  
2 (Doc. 1) is **DENIED** on all claims and the action is **DISMISSED**. The Clerk's  
3 Office is directed to enter a separate Final Judgment to conform to this  
4 Order. The Court **DECLINES** to grant Petitioner a certificate of  
5 appealability.

6           DATED this 12<sup>th</sup> day of June, 2017.

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David C. Bury  
United States District Judge