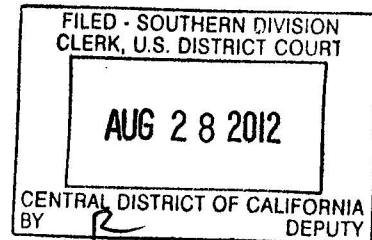


1
2 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL *Petitioner*
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
3 RECORD IN THIS ACTION ON THIS DATE.

4 DATED: 8.28.12
5 _____
6 DEPUTY CLERK



11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 RODNEY BARNES,) Case No. CV 12-2076-JPR
14)
Petitioner,)
15 vs.) MEMORANDUM OPINION AND ORDER
16) DENYING PETITION AND DISMISSING
TERRI GONZALES, Warden,) ACTION WITH PREJUDICE
17)
Respondent.)

18 PROCEEDINGS

19 On March 12, 2012, Petitioner filed a Petition for Writ of
20 Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C.
21 § 2254, raising four claims for relief. On May 14, 2012,
22 Respondent filed an Answer with an attached memorandum.
23 Petitioner did not file a reply. The parties consented to the
24 jurisdiction of the undersigned U.S. Magistrate Judge pursuant to
25 28 U.S.C. § 636(c). For the reasons discussed below, the Court
26 denies the Petition and dismisses this action with prejudice.
27

28 BACKGROUND

1 burglary, in violation of California Penal Code section 459, and
2 forgery, in violation of section 476. (Lodgment 12, 1 Clerk's
3 Tr. at 43-44.) The trial court sentenced Petitioner to four
4 years in prison. (Id. at 152-57.)

5 Petitioner appealed, raising claims corresponding to claims
6 one through three and subclaim (A) of claim four in the Petition.
7 (Lodgment 1.) On May 19, 2011, the court of appeal affirmed his
8 convictions and sentence. (Lodgment 4.) Petitioner then filed a
9 Petition for Review in the state supreme court, which that court
10 summarily denied on August 31, 2011. (Lodgments 5, 6.)

11 While his direct appeal was pending in the court of appeal,
12 Petitioner filed a habeas petition in the same court, raising
13 subclaim (B) of claim four. (Lodgment 7.) On May 19, 2011, the
14 court of appeal denied the petition in a reasoned decision.
15 (Lodgment 8.) Petitioner raised the same claim in a habeas
16 petition in the state supreme court, which summarily denied it on
17 August 31, 2011. (Lodgments 9, 10.)

18 **PETITIONER'S CLAIMS**

19 I. The trial court violated due process and Petitioner's
20 constitutional right to confront witnesses by admitting into
21 evidence a purportedly fake invoice given by defense counsel to
22 the prosecutor before trial. (Pet. at 5.)

23 II. The trial court violated due process by denying
24 Petitioner's motion to reopen the proceedings at the end of trial
25 to allow him to testify. (Id.)

26 III. The prosecutor committed misconduct by commenting in
27 closing argument on Petitioner's failure to testify, in violation
28 of Griffin v. California, 380 U.S. 609, 85 S. Ct. 1229, 14 L. Ed.

1 2d 106 (1965). (Pet. at 5-6.)

2 IV. Trial counsel was constitutionally ineffective for
3 failing to (A) object to the alleged Griffin error or (B)
4 authenticate the fake invoice given to her by Petitioner, which
5 was subsequently admitted at trial to inculcate him. (Id. at 6.)

6 **SUMMARY OF THE EVIDENCE**

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

15 On July 23, 2008, [Petitioner] entered a bank in
16 Lancaster, handed the teller a check, and asked to have
17 it cashed. The check proffered by [Petitioner] is drawn
18 on the account of a concrete manufacturer called
19 Robertson's. The check is not genuine: it lacks security
20 features, such as a border, colored background, invisible
21 fibers, and a special type font. Robertson's never
22 issued checks that look like the one that [Petitioner]
23 sought to negotiate, and [Petitioner]'s check bore a
24 serial number that was not used by Robertson's.

25 When [Petitioner] handed over the check, the bank
26

27
28 ¹ The Court has nonetheless independently reviewed the state-court record.

1 teller became suspicious because the texture of the paper
2 and the ink looked like something printed on a home
3 computer. (The teller received training from the bank to
4 help him identify fraudulent checks.) [Petitioner] did
5 not have an account at the bank, so the teller asked for
6 identification and placed imprints of [Petitioner]'s
7 finger on the check. When the check was run through a
8 computerized processing system, it generated an alert.
9 The teller directed [Petitioner] to wait in the lobby
10 while he verified the transaction with a supervisor.

11 While [Petitioner] waited, a bank manager
12 investigated the veracity of [Petitioner]'s check. He
13 located photocopies of Robertson's genuine checks, and
14 saw that the characteristics of those checks are entirely
15 different from the one presented by [Petitioner]. He
16 telephoned Robertson's to confirm that the check was
17 fraudulent, then contacted the bank's corporate security
18 department and the sheriff's department. He noticed that
19 [Petitioner] was fidgety and looked around nervously.
20 After a while, [Petitioner] departed the bank without a
21 word, leaving behind his identification and the check.

22 Two hours later, [Petitioner] reappeared at the
23 bank, approached the teller window, and asked for the
24 return of the check and his identification. The bank
25 manager - who by then knew that the check was fraudulent
26 - tried to stall [Petitioner] until the sheriff's
27 department arrived, and asked [Petitioner] why he had the
28 check. [Petitioner], who still seemed nervous, described

1 it as a payroll check and said that he had to leave for
2 an appointment. When the manager refused to return the
3 identification or the check, [Petitioner] turned around
4 and left. [Petitioner] did not seem surprised or shocked
5 that the bank refused to cash the check.

6 After [Petitioner] departed (for the second time),
7 a customer turned in a wallet that was left on the
8 counter at the bank. The wallet contained an ATM card
9 bearing [Petitioner]'s name, and a business card from the
10 California Department of Corrections. [Petitioner] did
11 not return to the bank to claim his wallet, his
12 identification, or the check. The person listed on the
13 CDC card was [Petitioner]'s parole officer.

14 The deputy sheriff assigned to the case has special
15 training to detect check fraud. He testified that it is
16 relatively simple to produce the kind of check that
17 [Petitioner] attempted to negotiate. The check stock and
18 check-writing software can be purchased at a business
19 supply store or online. The deputy confirmed with
20 Robertson's that the check tendered by [Petitioner] is
21 fraudulent. Based on the deputy's experience, he
22 believes that the check was produced on a home computer,
23 although the identity of its creator is unknown.

24 The parties stipulated that [Petitioner] sent a
25 letter to the court, and it was read to the jury. It
26 states, "My family is really suffering due to a bad check
27 that was issued to me for my labor, and I had no idea it
28 was bad. I actually furnished the bank with my

1 California identification card, three fingerprints, and
2 waited for over a half an hour. So that, in itself,
3 should prove I had no knowledge whatsoever whether the
4 check was genuine or not."

5 (Lodgment 4 at 2-3 (footnote omitted).)

6 STANDARD OF REVIEW

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

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

20 Under AEDPA, the "clearly established Federal law" that
21 controls federal habeas review of state-court decisions consists
22 of holdings of Supreme Court cases "as of the time of the
23 relevant state-court decision." Williams v. Taylor, 529 U.S.
24 362, 412, 120 S. Ct. 1495, 1523, 146 L. Ed. 2d 389 (2000).

25 Although a particular state-court decision may be both
26 "contrary to" and "an unreasonable application of" controlling
27 Supreme Court law, the two phrases have distinct meanings. Id.
28 at 391, 413. A state-court decision is "contrary to" clearly

1 established federal law if it either applies a rule that
2 contradicts governing Supreme Court law or reaches a result that
3 differs from the result the Supreme Court reached on "materially
4 indistinguishable" facts. Early v. Packer, 537 U.S. 3, 8, 123 S.
5 Ct. 362, 365, 154 L. Ed. 2d 263 (2002). A state court need not
6 cite or even be aware of the controlling Supreme Court cases, "so
7 long as neither the reasoning nor the result of the state-court
8 decision contradicts them." Id.

9 State-court decisions that are not "contrary to" Supreme
10 Court law may be set aside on federal habeas review only "if they
11 are not merely erroneous, but 'an unreasonable application' of
12 clearly established federal law, or based on 'an unreasonable
13 determination of the facts' (emphasis added)." Id. at 11. A
14 state-court decision that correctly identifies the governing
15 legal rule may be rejected if it unreasonably applies the rule to
16 the facts of a particular case. Williams, 529 U.S. at 406-08.
17 To obtain federal habeas relief for such an "unreasonable
18 application," however, a petitioner must show that the state
19 court's application of Supreme Court law is "objectively
20 unreasonable." Id. at 409-10. In other words, habeas relief is
21 warranted only if the state court's ruling is "so lacking in
22 justification that there was an error well understood and
23 comprehended in existing law beyond any possibility for
24 fairminded disagreement." Harrington v. Richter, 562 U.S. ____,
25 131 S. Ct. 770, 786-87, 178 L. Ed. 2d 624 (2011).

26 Here, Petitioner raised claims one through three and
27 subclaim (A) of claim four on direct appeal, and he raised
28 subclaim (B) of claim four on habeas review (Lodgments 1, 7); the