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8		UNITED	STATES DISTRICT COURT
9		CENTRAL	DISTRICT OF CALIFORNIA
10	JAYSON MATHEAW	SCHIMMEL,) CASE NO. CV 13-8340-PSG (PJW)
11		Petitioner,) ORDER ACCEPTING REPORT AND) ADOPTING FINDINGS, CONCLUSIONS,
12	V.) AND RECOMMENDATIONS OF UNITED) STATES MAGISTRATE JUDGE, AND
13	WILLIAM KNIPP,) DENYING CERTIFICATE OF) APPEALABILITY
14		Respondent.	
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Pursuant to 28 U.S.C. Section 636, the Court has reviewed the Petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court has engaged in a *de novo* review of those portions of the Report to which Petitioner and Respondent have objected. The Court accepts the Report and adopts the findings, conclusions, and recommendations of the Magistrate Judge with the following exception.

At page 21 of the Report and Recommendation, the Magistrate Judge analyzed Petitioner's claim that the trial court erred in instructing the jury about prior crimes evidence. The Magistrate Judge concluded that, because the California Supreme Court had denied this claim without comment, the Court would review it to determine whether the denial of the claim was "objectively unreasonable," citing *Himes v*. Thompson, 336 F.3d 848, 853 (9th Cir. 2003). Applying that standard,
 the Magistrate Judge concluded that the claim was without merit.

Since Himes, however, the United States Supreme Court has made
clear that federal courts should apply a more deferential standard,
reviewing such claims to determine whether there was any reasonable
basis for the state court to deny relief. Harrington v. Richter, 562
U.S. 86, 98 (2011); see also Hein v. Sullivan, 601 F.3d 897, 905 (9th
Cir. 2010). Obviously, under this more deferential standard,
Petitioner is not entitled to relief.

Further, for the reasons stated in the Report and Recommendation, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right and therefore, a certificate of appealability is denied. See 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

DATED:

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UNITED STATES DISTRICT JUDGE

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