



1 admitted to having suffered a prior serious or violent felony conviction for committing a  
2 lewd or lascivious act with a child and to having served a prior prison sentence (CAL.  
3 PENAL CODE §§ 667, 667.5, 1170.12). Petitioner was sentenced to fourteen years in state  
4 prison. (*Id.* at 177.)

5 After exhausting his state court remedies, Petitioner filed the current Petition.  
6 Thereafter, he filed a First Amended Petition. The Court assesses the First Amended  
7 Petition pursuant to the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”). 28  
8 U.S.C. § 2254. Under the AEDPA, a federal court shall presume that a determination of  
9 factual issues made by a State court is correct, and a petitioner has the burden of rebutting  
10 that presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

## 11 II.

12 The facts underlying Petitioner’s conviction are set forth in the California  
13 Court of Appeal’s opinion affirming his conviction. (Lodged Doc. No. 2.) The Court of  
14 Appeal’s statement of facts, summarized below, is reasonably supported by the record.

15 On an afternoon in May of 2011, Karen Arevalo-Garcia, a twenty-three year  
16 old woman, weighing approximately one hundred pounds and standing less than five feet  
17 tall, was riding on a public bus in Van Nuys. Petitioner, a “big guy” who weighed  
18 approximately 230 pounds, sat down next to her and spoke to her. Arevalo, who spoke  
19 only Spanish, did not understand Petitioner and tried to ignore him. Nevertheless,  
20 Petitioner continued talking to her.

21 When the bus reached the metro station, Arevalo transferred to a crowded Red  
22 Line train. Petitioner followed her, and stood four feet behind her. She then felt someone  
23 forcefully grab her buttocks from behind. She immediately turned around and found  
24 herself face-to-face with Petitioner. Petitioner then began tugging on Arevalo’s purse,  
25 while she struggled to hold on to it. Next, Petitioner punched her in the left eye with a  
26 closed fist and left the train car. A nearby police officer, who noticed the ensuing  
27 commotion, went after Petitioner and apprehended him within ten minutes.  
28

1 As a result of Petitioner's punch, Arevalo's eye became swollen and  
2 discolored. It remained black and blue for two to three weeks. She experienced  
3 immediate pain and dizziness from the punch, and she had headaches for two weeks.  
4

### 5 III.

6 Petitioner raises two separate challenges to the evidence supporting the jury's  
7 verdict. First, he maintains that the prosecutor failed to introduce sufficient evidence to  
8 prove the allegation that Petitioner inflicted great bodily injury upon his victim. In  
9 Petitioner's view, his use of force did not rise to the level of force needed to support a  
10 finding that he inflicted great bodily injury. Although Petitioner acknowledges that his  
11 attack on the victim caused her to sustain bruising and swelling in her eye and to  
12 experience prolonged headaches, he nevertheless contends that her injuries cannot support  
13 the jury's findings because they were not permanent. Additionally, he notes that the victim  
14 suffered no broken bones, lacerations, bleeding, loss of consciousness, or scarring, nor did  
15 she receive follow up medical treatment. As such, Petitioner concludes that the victim did  
16 not suffer great bodily injury as defined by California law; consequently, he believes there  
17 is no evidentiary basis to support the jury's finding that he inflicted great bodily injury.

18 Second, Petitioner contends that the evidence was insufficient to prove that  
19 he committed the crime of misdemeanor sexual battery. He concedes that the charged  
20 crime was committed; however, he argues that no evidence was offered to show that he  
21 – as opposed to someone else on the train – committed the criminal act. In support of this  
22 argument, he notes that no one, including the victim herself, testified that they saw him  
23 grab the victim. Instead, the evidence showed that the victim turned around after she was  
24 grabbed and saw Petitioner standing next to her. Petitioner maintains that the victim's  
25 testimony in the regard was insufficient as a matter of law to allow the jury to conclude  
26 that he was the person who grabbed her. The Court of Appeal rejected both of Petitioner's  
27 sufficiency of the evidence claims on their respective merits. As explained below, the  
28 Court of Appeal did not commit constitutional error in rejecting either claim.

1 Habeas relief is unavailable on a sufficiency of the evidence challenge unless  
2 “no rational trier of fact could have agreed with the jury.” *Cavazos v. Smith*, 565 U.S. \_\_\_,  
3 132 S. Ct. 2 (2011) (per curiam); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). All  
4 evidence must be considered in the light most favorable to the prosecution. *Jackson*, 443  
5 U.S. at 319. Accordingly, if the facts support conflicting inferences, reviewing courts  
6 “must presume – even if it does not affirmatively appear in the record – that the trier of  
7 fact resolved any such conflicts in favor of the prosecution, and must defer to that  
8 resolution.” *Id.* at 326; *Bruce v. Terhune*, 376 F.3d 950, 957 (9th Cir. 2004) (per curiam);  
9 *Turner v. Calderon*, 281 F.3d 851, 882 (9th Cir. 2002). Under AEDPA, federal courts  
10 must “apply the standards of *Jackson* with an additional layer of deference.” *Juan H. v.*  
11 *Allen*, 408 F.3d 1262, 1274 (9th Cir. 2005).

12 Furthermore, circumstantial evidence and inferences drawn from it may be  
13 sufficient to sustain a conviction. *See Jones v. Wood*, 207 F.3d 557, 563 (9th Cir. 2000)  
14 (finding sufficient evidence for murder conviction where “evidence was almost entirely  
15 circumstantial and relatively weak”). The reviewing court must respect the exclusive  
16 province of the factfinder to determine the credibility of witnesses, resolve evidentiary  
17 conflicts, and draw reasonable inferences from proven facts. *See United States v. Goode*,  
18 814 F.2d 1353, 1355 (9th Cir. 1987).

19 Here, the Court of Appeal reasonably rejected both of Petitioner’s sufficiency  
20 of the evidence claims. First, the evidence at trial supported the jury’s finding that  
21 Petitioner’s conduct caused the victim great bodily injury. In California, “great bodily  
22 injury” is defined as “a significant or substantial physical injury.” CAL. PENAL CODE  
23 § 12022.7(f); *People v. Cross*, 45 Cal. 4th 58, 63, 82 Cal. Rptr. 3d 373 (2008). California  
24 cases have observed that a “plain reading” of section 12022.7(f) “indicates the Legislature  
25 intended it to be applied broadly.” *Id.* at 66 n.3. Moreover, to be considered significant  
26 or substantial, the injury need not cause permanent, prolonged, or protracted  
27 disfigurement, impairment, or loss of bodily function. *People v. Escobar*, 3 Cal. 4th 740,  
28 749-50, 12 Cal. Rptr. 2d 586 (1992). Nor does it need to meet any particular standard for

1 severity or duration; instead, it need only be “a substantial injury beyond that inherent in  
2 the offense itself[.]” *People v. Le*, 137 Cal. App. 4th 54, 59, 39 Cal. Rptr. 3d 741 (2006).

3           Based on the evidence adduced at trial, the jury reasonably could conclude  
4 that the victim suffered great bodily injury. Petitioner’s punch caused the victim’s eye to  
5 become “really swollen,” and “the whole eye was really black.” According to the victim’s  
6 testimony, her eye remained black and blue for two to three weeks. She also testified that,  
7 as a result of the attack, she had headaches for approximately two weeks. Furthermore,  
8 the injury caused the victim to experience immediate pain and dizziness. A witness who  
9 examined the victim in the aftermath of the attack noted that her eye was swollen, red, and  
10 discolored. And, a police officer observed that the victim was holding her eye, crying, and  
11 complaining of pain. The weight of this evidence was more than enough to support the  
12 jury’s finding that Petitioner inflicted great bodily injury upon the victim. *See, e.g., People*  
13 *v. Washington*, 210 Cal. App. 4th 1042, 1047, 148 Cal. Rptr. 3d 748 (2012) (“An  
14 examination of California case law reveals that some physical pain or damage, such as  
15 lacerations, bruises, or abrasions is sufficient for a finding of ‘great bodily injury.’”).

16           Moreover, the injury to the victim went well beyond that inherent in the crime  
17 of assault with force likely to produce great bodily injury. Indeed, as the Court of Appeal  
18 explained, that crime does not require actual injury. Although Petitioner insists that, under  
19 California law, the injury must be of the type not routinely associated with the crime and  
20 must reflect a degree of brutality and violence substantially beyond that necessarily present  
21 in the offense, the Court of Appeal rejected this interpretation of law. This Court is bound  
22 by the Court of Appeal’s interpretation of California law. *See Bradshaw v. Richey*, 546  
23 U.S. 74, 76 (2005) (per curiam) (stating that “a state court’s interpretation of state law,  
24 including one announced on direct appeal of the challenged conviction, binds a federal  
25 court sitting in habeas corpus”). In sum, the Court of Appeal reasonably concluded that  
26 the evidence was sufficient to support the jury’s finding that Petitioner inflicted great  
27 bodily injury.



1 review. *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (“[I]t is not the province of a  
2 federal habeas court to reexamine state-court decisions on state-law grounds.”). A  
3 petitioner’s contention that a state trial court improperly exercised its discretion under state  
4 sentencing law generally does not allege any cognizable claim for federal habeas relief.  
5 *See Brown v. Mayle*, 283 F.3d 1019, 1040 (9th Cir. 2002), *vacated on other grounds*, 538  
6 U.S. 901 (2003), *remanded to* 66 F. App’x 136 (9th Cir. 2003) (claim that trial court  
7 abused its discretion by failing to strike prior conviction alleged under Three Strikes Law  
8 not cognizable on federal habeas review). Nonetheless, a state court’s misapplication of  
9 state sentencing law may violate due process if “[the error] is so arbitrary or capricious as  
10 to constitute an independent due process” violation. *Richmond v. Lewis*, 506 U.S. 40, 50  
11 (1992).

12 Here, Petitioner has not shown that the trial court misapplied California’s  
13 sentencing laws. On the contrary, the Court of Appeal held that the trial court’s decision  
14 was proper under California law. The Court of Appeal’s holding in that regard is binding  
15 on this Court. *See Bradshaw*, 546 U.S. at 76.

16 Moreover, Petitioner’s sentence did not result in fundamental unfairness, nor  
17 was it arbitrary or capricious. Petitioner had a long criminal history, dating back to 1992.  
18 That history evidenced a pattern of targeting young girls. Indeed, his criminal history  
19 included convictions for false imprisonment with violence and for committing a lewd or  
20 lascivious act with a child under fourteen years of age. In connection with the first of  
21 those two convictions, Petitioner was alleged to have pulled a thirteen-year-old girl from  
22 a bus stop into his car, driven off with her, and insisted that she disrobe. The victim in that  
23 case escaped by jumping from Petitioner’s car. In connection with his 1993 conviction for  
24 committing a lewd or lascivious act with a child under fourteen years of age, Petitioner  
25 engaged in a sexual relationship with a thirteen-year-old girl whom he was alleged to have  
26 raped on at least one occasion. In addition, he had suffered convictions for contributing  
27 to the delinquency of a minor, grand theft of a vehicle, and carrying a concealed dirk or  
28 dagger.

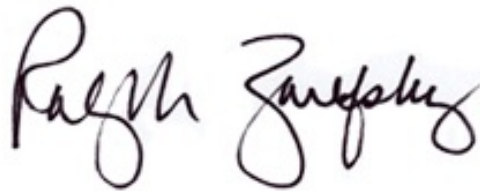
1 Furthermore, contrary to Petitioner's arguments, the circumstances underlying  
2 his current crime also support the trial court's refusal to strike his prior conviction. In the  
3 current case, he sexually assaulted a young woman, and, when she objected, he punched  
4 her so hard in her eye that it became swollen and discolored and remained black and blue  
5 for two to three weeks. Notably, Petitioner's victim was less than five feet tall and  
6 weighed approximately 130 pounds less than Petitioner, who was, according to trial  
7 testimony, a "big guy." Given these circumstances, the trial court did not deprive  
8 Petitioner of any constitutional right by declining to exercise its discretion to strike his  
9 prior conviction, and its decision against doing so did not result in a fundamentally unfair  
10 sentence.

11 Accordingly, the state courts' rejection of Petitioner's sentencing claim was  
12 neither contrary to, nor an unreasonable application of, clearly established federal law as  
13 determined by the Supreme Court.

14  
15 **V. ORDER**

16 For the foregoing reasons, the undersigned orders that judgment be entered denying  
17 the First Amended Petition with prejudice.

18  
19 DATED: 12/29/14

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22 \_\_\_\_\_  
23 RALPH ZAREFSKY  
24 UNITED STATES MAGISTRATE JUDGE  
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