



1 unreasonable for the California Court of Appeal to conclude that further  
2 development was unnecessary in light of the record already before it. *Cf. Nunes v.*  
3 *Mueller*, 350 F.3d 1045, 1055 (9th Cir. 2003) (petitioner had pled a prima facie  
4 case for relief where his assertions, taken at face value, were supported by “ample  
5 evidence in the record before the state court to support those assertions”).

6 Specifically, with respect to Ground One, the record before the state court  
7 reflected that the victim was impeached by petitioner’s trial counsel on numerous  
8 grounds and that the evidence of petitioner’s guilt did not rely solely on the victim’s  
9 testimony. In particular, items taken from the victim during the attack — her  
10 driver’s license and forced statement — were later found in petitioner’s apartment,  
11 and he had no credible explanation for his possession of them. With respect to  
12 Ground Two, the record before the state court reflected that the allegedly false  
13 evidence about the stolen cell phone, even taken at face value, was not material  
14 because the cell phone was only a minor issue as to the victim’s credibility, which  
15 was impeached on several more significant grounds before the jury. Moreover, the  
16 victim was in fact cross-examined about the cell phone. Given this evidence in the  
17 record already before the state court, it would not have been objectively  
18 unreasonable for the California Court of Appeal to reject petitioner’s claims.

19 IT THEREFORE IS ORDERED that (1) the Report and Recommendation of  
20 the Magistrate Judge is accepted and adopted; (2) petitioner’s request for an  
21 evidentiary hearing is denied; and (3) Judgment shall be entered denying the  
22 Petition and dismissing this action with prejudice.

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24 DATED: April 26, 2017



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MICHAEL W. FITZGERALD  
UNITED STATES DISTRICT JUDGE