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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT IBARRA,)	Case No. CV 15-8772-DMG (JPR)
)	
Petitioner,)	
)	ORDER ACCEPTING FINDINGS AND
v.)	RECOMMENDATIONS OF U.S.
)	MAGISTRATE JUDGE
W.L. MONTGOMERY, Warden,)	
)	
Respondent.)	
_____)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed *de novo* the Petition, records on file, and Report and Recommendation of U.S. Magistrate Judge. On April 27, 2017, Petitioner filed Objections to the R. & R. He raises two objections, both based on his argument that the Magistrate Judge erred in stating that (1) the trial court found Miracle’s statements “untrustworthy” and not “significantly” against his penal interest and (2) the statements were made after Miracle was sentenced to death. (Objs. at 3.) Petitioner attached portions of the Reporter’s Transcript to support his claims.

Contrary to Petitioner’s assertion, the trial court clearly found that Miracle’s statements – to the effect that he was the only person responsible for the murder and that Petitioner was innocent – were untrustworthy and not significantly against his

1 penal interest. (See, e.g., Lodged Doc. 2, 6 Rep.'s Tr. at 1609-
2 10 ("It seems to me that they lack the required findings that has
3 to be made by a court that they're trustworthy."), 1610-11 ("Mr.
4 Miracle has a relationship with [Petitioner]," "none of the
5 statements that the defense is seeking to introduce that are
6 exculpatory of [Petitioner] are at the same time incriminating
7 against Mr. Miracle," and "they're not significantly against his
8 penal interest," which "goes to the question of whether they
9 should be considered trustworthy"), 1612-13 ("So, it doesn't seem
10 to me that the circumstances under which these statements are
11 made indicate trustworthiness, to the contrary . . . the
12 circumstances just don't seem to qualify as trustworthy
13 declarations against penal interest."), 1613 ("it seems to me
14 that they lack trustworthiness and I'm not going to admit them"),
15 1615 ("But the circumstances under which the hearsay version by
16 Mr. Miracle are given clearly suggest to the Court that they're
17 not trustworthy."), 1616 ("I don't consider them trustworthy."),
18 7 Rep.'s Tr. at 1748 ("It seems like the totality of the
19 circumstances suggests that the statements are untrustworthy, and
20 I'm going to exclude them."))¹

21 The portion of the transcript cited by Petitioner to support
22 his claim that the trial court found certain of Miracle's
23 statements trustworthy (see Objs. at 3-6) is in fact a discussion
24

25 ¹ Petitioner suggests that the trial court was referring to
26 different statements, apparently made to "Miracle's stepmother."
27 (See Objs. at 8.) But the portions of the trial transcript
28 referred to at the cited pages of the R. & R. (see 6 Rep.'s Tr.
at 1611, 1615) clearly refer to the statements made by Miracle to
the court and in response to Petitioner's trial counsel's
questions.

1 of whether to admit "the fact of [Miracle's] conviction" and his
2 "admission of guilt." (See Lodged Doc. 2, 7 Rep.'s Tr. at 1749-
3 53.) Indeed, the trial court begins that discussion by
4 reiterating that the statements made by Miracle in an "attempt to
5 exculpate" Petitioner "are untrustworthy" and would not be
6 admitted. (Id. at 1748.) The discussion then continues in
7 relation to the admissibility of the fact of Miracle's
8 conviction. (Id. at 1749.) The trial court found that
9 "trustworthiness is not an issue" as to Miracle's guilty plea,
10 not his statements exculpating Petitioner. (Id. at 1750.) The
11 trial court stressed that the issue under discussion in the pages
12 cited by Petitioner was "a narrow one . . . the fact of the
13 conviction, admission of guilt in the murder." (Id. at 1752.)


14 Petitioner also suggests that the Magistrate Judge found
15 that "the statements were made after Miracle was sentenced to
16 death," which was somehow in error. (Objs. at 3.) As the
17 Magistrate Judge correctly noted, however, some of Miracle's
18 statements were made before he was sentenced and some were made
19 after. (See R. & R. at 27-28.) In both cases, the statements
20 were untrustworthy. (Id.)

21 Petitioner asserts that the Magistrate Judge erred in
22 relying "on the fact that Joshua Miracle was not facing criminal
23 liability" when he made his pre-penalty-phase statements. (Objs.
24 at 6.) Petitioner argues that a jury could consider "that the
25 defendant acted alone" as a "circumstance of the crime to
26 determin[e] the death penalty," citing California Penal Code
27 section 190.3. (Id.) But it was not the trial court or the
28 Magistrate Judge who suggested that Miracle's statements were

1 intended to "gain favor from the jury" in his sentencing; it was
2 Miracle himself. (See Lodged Doc. 1, 4 Clerk's Tr. at 996-97
3 ("I'd like the Court [to] give thought to the possibility that
4 the jury could very well decide not to impose the death sentence
5 . . . in recognition of the fact that I chose not to make any
6 excuses for my action and was willing to accept the consequences
7 unconditionally.")) Indeed, one of the trial court's reasons
8 for finding Miracle's pre-penalty-phase statements untrustworthy,
9 which the Magistrate Judge found not objectively unreasonable,
10 was that Miracle had the time and motivation to carefully prepare
11 them and that they were intended, at least in part, to assist
12 Petitioner, and possibly Miracle himself. (See R. & R. at 27-
13 28.)

14 Having reviewed *de novo* those portions of the R&R to which
15 objections were filed, the Court accepts the findings and
16 recommendations of the Magistrate Judge. IT THEREFORE IS ORDERED
17 that the Petition is denied, Petitioner's motion for a stay is
18 denied, and Judgment be entered dismissing this action with
19 prejudice.

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21 DATED: September 21, 2017


DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

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