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10 FRED NOWDEN,

v.

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13 W.L. MONTGOMERY, Warden,

Respondent.

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CENTRAL DISTRICT OF CALIFORNIA

Petitioner,

UNITED STATES DISTRICT COURT

Case No. CV 16-05348 CJC (AFM)

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition, records on file and the Report and Recommendation of United States Magistrate Judge. Further, the Court has engaged in a <u>de novo</u> review of those portions of the Report to which Petitioner has objected.

The sentence on page 31, lines 5-6 of the Report and Recommendation is ordered deleted and replaced with the following sentence: "A search near the Durants' home shortly after the robbery revealed two duffle bags, including a bag taken from one of the victims, containing several pounds of marijuana and various drug paraphernalia. (6 RT 481-91.)" This does not change the conclusion that the prosecutor's argument was proper and did not signal a "new theory" of the case.

The Court accepts the findings and recommendations of the Magistrate Judge as modified.

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

DATED: March 9, 2018

CORMÁC J. CARNEY UNITED STATES DISTRICT JUDGE