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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL CAMPBELL,
Petitioner,
v.
WARDEN RICK HILL,
Respondent.

Case No. 2:20-cv-01530-JWH (SHK)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

1 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the
2 relevant records on file, and the Report and Recommendation of the United States
3 Magistrate Judge. The Court has engaged in de novo review of those portions of
4 the Report to which Petitioner has objected. The Court **ACCEPTS** the findings
5 and recommendation of the Magistrate Judge.

6 In the interest of thoroughness, the Court finds that Ground Three of the
7 Petition fails on both (1) procedural grounds, as stated on pages 15 through 20 of
8 the Report and Recommendation; and (2) on the merits. Specifically, to the extent
9 that Ground Three presents a cognizable federal claim, in light of the evidence
10 presented at trial and the instructions as a whole, there is no likelihood that the jury
11 applied the flight instruction in a way that violated the Constitution. *See Houston*
12 *v. Roe*, 177 F.3d 901, 908-09 (9th Cir. 1999) (explaining that, when a jury
13 instruction is alleged to have shifted the burden of proof, it “must be viewed in the
14 context of the entire trial and the jury instructions taken as a whole,” with “[t]he
15 relevant inquiry” being “whether there is a reasonable likelihood that the jury has
16 applied the challenged instruction in an unconstitutional manner” (internal
17 quotation marks and citation omitted)). In addition, even if the Court could find
18 that the flight instruction was erroneous, any error was harmless in light of the trial
19 record as a whole. *See Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993)
20 (stating that, on harmless error review, our inquiry “is whether, in light of the
21 record as a whole, [the error] had substantial and injurious effect or influence in
22 determining the jury’s verdict” (internal quotation marks omitted)).

23 It is therefore **ORDERED** as follows:

- 24 1. The Petition is **DENIED**.

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2. Judgment shall be entered **DISMISSING** this action **with prejudice**.
IT IS SO ORDERED.

Dated: May 23, 2023



HONORABLE JOHN W. HOLCOMB
United States District Judge