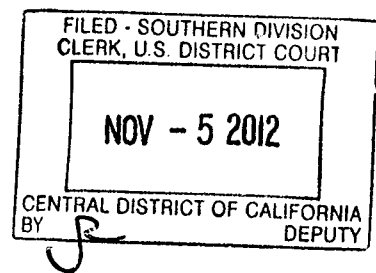


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I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY  
FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL *petitioner*  
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF  
RECORD IN THIS ACTION ON THIS DATE.

DATED: 11-5-12

[Signature]  
DEPUTY CLERK



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INOCENTE SECUDINO,	)	Case No. SACV 12-0162-SJO (JPR)
	)	
Petitioner,	)	
	)	ORDER ACCEPTING FINDINGS AND
vs.	)	RECOMMENDATIONS OF U.S.
	)	MAGISTRATE JUDGE
R. GOWER, Interim 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 the U.S. Magistrate Judge. On October 15, 2012, Petitioner filed Objections to the Report and Recommendation, which the Court has also reviewed.

As to his sufficiency-of-the-evidence claim, Petitioner mostly just reargues the evidence and asserts that no reasonable jury could have found beyond a reasonable doubt that he did not act in the heat of passion or in reasonable self-defense or defense of others. (Objections at 2-6.) But as the Magistrate Judge explained in the Report and Recommendation, on AEDPA habeas review, this Court may not reweigh the evidence and draw different inferences from it; rather, if sufficient evidence existed such that a rational trier of fact could have found

1 Petitioner guilty beyond a reasonable doubt, relief must be  
2 denied. Here, the evidence was more than sufficient. In an  
3 interview with the police upon his arrest, Petitioner admitted  
4 that he intentionally shot the victim from behind in the head as  
5 the victim was running away from him. (Lodged Doc. 1, 2 Clerk's  
6 Tr. at 313; Lodged Doc. 2, 2 Rep.'s Tr. at 261-62.) Although the  
7 victim had earlier been chasing a gang associate of Petitioner's,  
8 he had stopped when he saw Petitioner approach with a gun and  
9 instead had tried to run away. (Lodged Doc. 2, 1 Rep.'s Tr. at  
10 50-56, 60, 64-66, 71-74, 97-102, 106-09, 123.) Moreover, the  
11 victim was not found with any weapon, and he never showed one at  
12 any time during the events leading up to the shooting. (Id. at  
13 55, 64-66, 103-07, 114, 151-52, 165, 184-87.) Although  
14 Petitioner argues that because he was able to shoot and kill the  
15 victim the victim was necessarily still close enough to  
16 Petitioner to have caused him harm had he had a gun, the fact  
17 remains that the victim was running away from Petitioner at the  
18 time. A rational trier of fact could clearly have concluded, as  
19 Petitioner's did, that he had no need to shoot - and certainly  
20 not aim for the victim's head.

21 Petitioner also complains that the Magistrate Judge  
22 erroneously relied on state law in adjudicating Petitioner's  
23 sufficiency claim, in contravention of the U.S. Supreme Court's  
24 recent ruling in Coleman v. Johnson, 566 U.S. \_\_\_, 132 S. Ct.  
25 2060, 182 L. Ed. 2d 978 (2012). (Objections at 2, 5.) In that  
26 case, the Supreme Court held that the reviewing court "must look  
27 to state law for the substantive elements of the criminal  
28 offense," although the "minimum amount of evidence that the Due

1 Process Clause requires to prove the offense is purely a matter  
2 of federal law." Id. at 2064 (internal quotation marks omitted).

3 In a paragraph that began, "Under California law," the  
4 Magistrate Judge properly cited California cases for the elements  
5 of the offenses with which Petitioner was charged. (See R&R at  
6 11-12.) As Coleman directs, the Magistrate Judge relied on  
7 federal law to determine that the evidence against Petitioner was  
8 sufficient to sustain his convictions under AEDPA review. (See  
9 R&R at 9-11, 16.) There was no error.

10 Petitioner asserts that the Magistrate Judge erred in  
11 considering his second claim, that the trial court's instructions  
12 to the jury on voluntary manslaughter violated due process,  
13 because she neglected to consider the instructions in the context  
14 of the prosecutor's closing argument. (Objections at 6, 7-8.)  
15 As an initial matter, Petitioner's federal habeas Petition  
16 nowhere even mentions the prosecutor's closing argument, much  
17 less argues that it acted to render the instructions ambiguous or  
18 confusing. Thus, Petitioner has not properly raised this  
19 argument on federal habeas review. See Delgadillo v. Woodford,  
20 527 F.3d 919, 930 n.4 (9th Cir. 2008) (holding that reply is not  
21 proper place to raise new arguments). But in any event, there  
22 was nothing improper about the prosecutor's arguments cited by  
23 Petitioner in his objections (see Objections at 8), which were to  
24 the effect that Petitioner could not have acted in imperfect  
25 self-defense or defense of others because he left the scene to go  
26 get his gun, returned, and then shot the victim when he was  
27 running away from Petitioner, after any danger had ended. The  
28 prosecutor is entitled to argue reasonable inferences from the

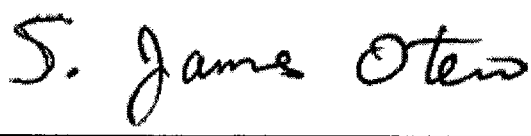
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evidence, and this was certainly one. See Ceja v. Stewart, 97 F.3d 1246, 1253-54 (9th Cir. 1996).

Having made a de novo determination of those portions of the Report and Recommendation to which Petitioner has filed Objections, the Court accepts the findings and recommendations of the Magistrate Judge.

IT THEREFORE IS ORDERED that (1) the Petition is denied without leave to amend and (2) Judgment be entered dismissing this action with prejudice.

November 2, 2012.



DATED: \_\_\_\_\_

\_\_\_\_\_  
S. JAMES OTERO  
U.S. DISTRICT JUDGE