

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESUS REYNOSO FLORES,
Petitioner,
v.
WILLIAM MUNIZ, Warden
Respondent.

Case No. 1:16-cv-01475-LJO-MJS (HC)
**FINDINGS AND RECOMMENDATION TO
DENY PETITION FOR WRIT OF HABEAS
CORPUS**
THIRTY (30) DAY OBJECTION DEADLINE

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus under 28 U.S.C. § 2254. He is represented by Diane Therese Letarte. Respondent William Muniz is represented by Darren Kyle Indermill of the Office of the California Attorney General.

The petition raises a single issue: whether the trial court erred in failing to suppress Petitioner's confession on the ground it was obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966).

For the reasons stated below, the undersigned will recommend that the petition be denied.

1 **I. Procedural History**

2 Petitioner is currently in the custody of the California Department of Corrections
3 and Rehabilitation pursuant to the June 21, 2013 judgment of the Superior Court of
4 California, County of Madera for first degree murder, with felony-murder and lying-in-wait
5 special circumstances, and premeditated attempted murder with firearm enhancements.
6 He was sentenced to life without the possibility of parole, with an additional
7 indeterminate term of fifty-two years to life. (Lodged Doc. 4 at 933.) People v. Flores, No.
8 F067554, 2015 WL 3902037, at *1-2 (Cal. Ct. App. June 24, 2015).

9 Petitioner appealed his conviction and sentence. (Lodged Doc. 26.) On June 24,
10 2015 the California Court of Appeal for the Fifth Appellate District ordered the trial court
11 to correct the abstract of judgment with respect to presentence custody credit, but
12 otherwise affirmed the judgment. (Lodged Doc. 29.) Flores, 2015 WL 3902037, at *13.
13 On September 29, 2015, the California Supreme Court denied review. (Lodged Doc. 31.)

14 Petitioner filed the instant federal habeas petition on October 3, 2016. (ECF No.
15 1.) Respondent filed an answer to the petition on January 4, 2017. (ECD No. 13.)
16 Petitioner filed a traverse on January 12, 2017. (ECF No. 15.). The matter stands ready
17 for adjudication.

18 **II. Factual Background¹**

19 ***Dairy Shootings***

20 On January 19, 2008, Sergio Ventura, Salvador Gutierrez
21 Martinez, and Alberto Ivan Narvaez–Torres, were working the
22 late nightshift at the Coelho Farms dairy in Chowchilla. It was
Narvaez–Torres's first night on the job.

23 As the three men worked in the milking barn, two men rushed
24 in and one of them initially fired two gunshots. The shooter
25 was wearing a multicolored sweater and a yellow bandana.
26 The shooter used a rifle with a piece of cloth tied on to catch
the shell casings as they were ejected from the gun. The
second assailant carried a shotgun but did not fire any shots.

27 _____
28 ¹ The Fifth District Court of Appeal's summary of the facts in its June 24, 2015 opinion is presumed
correct. 28 U.S.C. § 2254(e)(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ventura explained that Narvaez–Torres was shot and dropped to the ground. A bullet grazed Ventura in the head. Ventura initially tried to run away, saw someone else had entered the barn, and realized he could not escape. Ventura dropped to the ground and played dead. Narvaez–Torres was making noises until the shooter shot him again.

Right after Narvaez–Torres stopped making any sounds, Ventura could feel the assailants searching his pants pockets. Referring to Ventura, one of the assailants said to the other that “[t]his dude, he doesn't have anything.” When Martinez, the third dairy worker, saw a gun and heard gunshots, he ran out of the barn, got a tractor, and went to Tim Coelho's home.

Coelho's home is about a quarter of a mile from the dairy barn. When Martinez and Coelho returned to the barn, they found Narvaez–Torres not breathing, with a pool of blood behind his head. A spent bullet was found in the barn. During the autopsy of Narvaez–Torres, one bullet was recovered from the victim's brain and another was recovered from his vertebrae. The bullets recovered from Narvaez–Torres were .22–caliber.

Ventura explained that Flores–Ventura was his cousin and was familiar to him. Flores–Ventura had previously worked at the dairy, but stopped doing so months prior to the shooting. Ventura saw the assailants at trial and identified Flores–Ventura. Ventura viewed a video of the shooting and testified that it accurately depicted the events that occurred that night.

According to Coelho, Flores–Ventura had worked at the dairy until August 2007. Coelho fired Flores–Ventura because he was tardy to work and failed to show up to work a couple of times.

Soon after the shooting, Flores told his friend Miguel Guillen that he had gone with Flores–Ventura to the dairy in Flores's car. They went to the dairy because someone owed Flores–Ventura money. Flores told Guillen he shot the guy who was killed with a .22–caliber rifle. When Guillen asked Flores why he did it, Flores said “he had to.” Flores also told Guillen they got \$10 from the victims and he later buried or burned the rifle.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Flores's Conversations with Confidential Informant

Sergeant Jason Clark of the Madera County Sheriff's Department was the lead detective in the murder investigation. Clark was introduced by a narcotics investigator to a confidential informant known as Chino on April 18, 2008. Chino agreed to use a digital recorder and subsequently met with Flores on April 18 to record their conversation. An attempt to record a conversation between Chino and Flores on April 19 failed. A second recording was made on April 21 and a third recording was made on April 24. All three recordings were transcribed.

On April 18, Flores admitted he did the "job" at the dairy. When Chino told Flores he did not believe Flores did it, Flores replied that hardly anyone knew. Flores told Chino he was angry at a guy who owed him money. Flores said to Chino that the guy he killed at the dairy, "it was not his problem." Flores referred to the gun being a sawed-off .22 rifle and that it was burned. Flores said he burned the distinctive sweater he was wearing during the shooting. The remaining clothes Flores wore that day were either burned or thrown away. Flores said he had a sock attached to the rifle with a rubber band to catch the ejected shells.

Flores-Ventura's residence was searched on April 28, 2008. In one of the bedrooms, investigators found a shotgun and shotgun ammunition on the floor next to the bed. Flores's residence was also searched on the same day. A bag of .22-caliber ammunition was found in a white pickup truck parked next to the residence. Investigators found a revolver in the glove compartment of another truck at the residence and a shotgun was found underneath the sofa cushions inside the residence.

Custodial Interrogation of Flores-Ventura

Flores-Ventura was taken into custody and questioned by Sergeant Clark and Detective Zachary Zamudio at the Chowchilla Police Department. Flores-Ventura was given his Miranda rights, which he waived. The interrogation was recorded, played for the jury, and also transcribed.

Flores-Ventura initially denied any involvement with the shootings at the dairy. Flores-Ventura then admitted he went to the dairy with Flores. Flores-Ventura told the investigators he had a shotgun and Flores was armed with a .22 rifle. They drove to the dairy, parked by some trees, and waited in some

1 bushes for five to 15 minutes, or as long as 20 minutes.
2 Flores asked Flores–Ventura if he “[s]hould ... take all of
3 them out?” Flores–Ventura said, “No dude, don’t take
4 nobody out.” When they went into the barn, Flores asked
5 Flores–Ventura whether he “[s]hould ... do it.” Flores–
6 Ventura said he did not know and it was up to Flores. Flores
7 then shot the victims. As one of the victims was whining,
8 Flores shot him again. When Flores–Ventura saw that one of
9 the men who had been shot was his cousin, he wanted to get
10 out of there. Flores–Ventura said Flores turned the dead
11 victim over and took some money. Flores–Ventura said they
12 brought guns just to scare the victims. According to Flores–
13 Ventura, everyone in Chowchilla knew Flores was one of the
14 assailants because of the distinctive sweater he wore.

15 ***Custodial Interrogation of Flores***

16 Flores was interrogated in an interview room in the Madera
17 County Department of Corrections Classifications Unit on
18 April 28 by Sergeant Zamudio and Detective Clark. The audio
19 recording of the interrogation was played for the jury at trial
20 and a transcription is included in the record.

21 Clark read Flores his rights pursuant to Miranda off of a
22 department issued card. Flores acknowledged he understood
23 each right, waived them, and talked to the investigators. Early
24 during questioning, Zamudio and Clark told Flores they knew
25 he perpetrated the crime and they had proof he did it. Flores
26 denied the allegation. Flores denied having a rifle and said he
27 only had a shotgun. The investigators told Flores he was
28 probably thinking he would have a short stay in jail and get
out, but they assured Flores this would not happen. The
investigators told Flores they knew he went to the dairy with
another person, they knew the car he drove, and they knew
exactly what had happened. Further, the investigators
asserted Flores knew where the rifle was located, that he had
not gotten rid of it and they needed to get it before it hurt
someone else. Flores replied he did not know where the rifle
was located and again claimed he only had a shotgun. When
the investigators insisted to Flores everything they were
telling him was true, Flores replied, “It’s just bullshit.” The
investigators told Flores to start over and to tell the truth but
Flores replied, “I’m done talking.”

Flores was told that when they walked out of the interrogation
room, he was going to be charged with murder, attempted
murder, and conspiracy. Flores was asked if he had intended
to kill anyone and to explain what had been going on in his

1 head. The investigators assured Flores they were not
2 "bullshitt[ing]" him. When Flores was told the investigators
3 had already talked to his partner and they were now going to
4 explain to him how the crime occurred, Flores said he did not
5 want to hear about it.

6 The investigators asked Flores whether it was hard for him to
7 sleep at night or if he was just a cold-blooded killer. They told
8 Flores they were not going to go away. The investigators told
9 Flores they had found someone who had seen the rifle. They
10 told Flores they found live .22 rounds and had a recording of
11 Flores talking about committing the crimes. The investigators
12 also told Flores they had seen his car and taken fingerprints
13 from it.

14 The investigators asked Flores if he had gone to the dairy to
15 kill three people. They told Flores the story was one-sided but
16 he could answer their questions. Flores replied, "I just want to
17 go back to my cell." When the officers asked if this was what
18 he wanted, Flores replied, "Yeah." The investigators told
19 Flores he would go back to his cell shortly and then asked
20 him if he was tired of hearing the truth. The investigators
21 suggested the image of the murder victim must be tearing
22 Flores up, asked him how he felt when he saw the victim's
23 "life go out," and to consider what his mother would want him
24 to do.

25 The questioning continued for another two hours. The
26 investigators suggested they would have to tell Flores's
27 mother that he was a cold-blooded murderer. Flores denied
28 that he was. When Flores was again asked how much of a
cold-blooded murderer he was, he replied, "It just happened."

As the investigators confronted Flores with the details of the
crimes, he said he wanted to go home. When the
investigators suggested he would feel a lot better after talking
to them, Flores replied, "Yeah, but then [it's] gonna look bad
on me. [¶] ... [¶] I don't want to do time."

Flores continued to insist he did not know where the rifle was
located. When Flores was asked if someone was supposed
to be killed at the dairy, he replied, "No." Flores then said that
it was Flores–Ventura's idea to drive out to the dairy that
night to get money from someone who worked there. Flores
did not know how much money was owed to Flores–Ventura
or whether the guy was at the dairy. Flores said the crimes
"just happened" and they did not want to get "caught up or
something." Flores would not blame Flores–Ventura and said

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the events were no one's fault. Flores said they did not know where the other dairy worker went and they panicked.

The investigators asked Flores if he needed a break or something to drink. Flores replied, "No. I wanna just go relax." Flores told the investigators he knew they were going to hold him, and he was told his bail would be high. Flores said he was hungry and wanted to go. When asked if he was sure, he said "[y]eah," but then asserted he was not a criminal and continued answering questions.

Flores told the investigators the person he and Flores–Ventura had been looking for was not at the dairy, they got scared and "freaked out," and he killed the victim by accident. Flores admitted he shot both men that night. Flores admitted that when the victim was yelling, Flores shot him in the head. Flores admitted that he "did the sweater." Flores later said he wanted to go, but then continued to insist he did not know where the rifle was located.

Flores was asked if he wanted to continue talking. He replied twice that he was "cool," wanted to eat, and was cold. Investigators offered to bring Flores food and a blanket or a sweater. Flores immediately received a sweater.

Flores said he and Flores–Ventura waited across the street 15 or 30 minutes to see who was coming and going before they walked to the barn. Flores had the rifle and Flores–Ventura carried the shotgun. Flores shot both victims. They threw their clothes in a dumpster. Flores said he did not intend to shoot anyone, he only wanted to scare them. The investigators asked Flores if he wanted water. He replied he just wanted to relax. Flores then explained the rifle was destroyed, cut into pieces and thrown into different spots, and a child would not find it.

Hearing on Flores's Motion to Exclude His Confession

The court conducted a hearing pursuant to Evidence Code section 402 on Flores's motion to exclude his confession for violating Miranda. Outside the presence of the jury, Sergeant Zamudio listened to the recording of Flores's interrogation while following a written transcript of the recording. Zamudio stated the transcript accurately depicted the interrogation. The examination room was about 12 feet by 10 feet and had a table. Flores was not handcuffed during questioning.

1 During questioning, Flores said he wanted to go back to his
2 cell and later mentioned wanting to go home. Zamudio
3 believed Flores did not want to end questioning altogether,
4 but felt the questions were hitting close to home and Flores
5 did not want to respond to them. When Flores said he wanted
6 to go home, Zamudio told him that was not an option and
7 continued talking to him.

8 Zamudio understood that when a defendant states he or she
9 wants to remain silent, his questioning of the defendant has
10 to end. Flores, however, did not say he wanted to remain
11 silent. Zamudio would have stopped questioning had Flores
12 said he wanted to remain silent. After a long period of silence,
13 Flores had said he wanted to go back to the cell.

14 Zamudio viewed Flores's comment about being "done talking"
15 as a similar attempt to avoid the particular questions he was
16 being asked. Sergeant Clark also testified he did not believe
17 Flores's statements were an invocation of his right to remain
18 silent based on his demeanor and the circumstances
19 surrounding the statement. Zamudio and Clark both observed
20 that during most of the questioning, Flores looked down at
21 the ground. Flores was not falling asleep. Clark described
22 Flores as looking defeated and overwhelmed during the
23 interrogation.

24 The prosecutor argued that Flores had received and waived
25 his Miranda rights and failed to make a clear, unequivocal
26 invocation of the right to remain silent. Flores's counsel
27 argued that his client's request to go back to his jail cell was
28 the functional equivalent of asserting his right to remain
silent. The trial court found Flores failed to make an
unequivocal and unambiguous invocation of his right to
remain silent. The court noted questioning continued and
Flores continued to answer questions rather than refusing to
do so or asking for questioning to stop. The court found
Flores's statements to be voluntary and denied his motion to
exclude them.

23 People v. Flores, No. F067554, 2015 WL 3902037, at *2–5 (Cal. Ct. App. June 24,
24 2015).

25 **III. Jurisdiction and Venue**

26 Relief by way of a writ of habeas corpus extends to a prisoner under a judgment
27 of a state court if the custody violates the Constitution, laws, or treaties of the United
28

1 States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 529 U.S. 362,
2 375 n.7 (2000). Petitioner asserts that he suffered a violation of his constitutional rights.
3 Petitioner was convicted and sentenced in this district. 28 U.S.C. § 2241(d); 2254(a).
4 The Court concludes that it has jurisdiction over the action and that venue is proper.

5 **IV. Applicable Law**

6 The petition was filed after April 24, 1996 and is governed by the Antiterrorism
7 and Effective Death Penalty Act of 1996 (“AEDPA”). Lindh v. Murphy, 521 U.S. 320, 326
8 (1997); Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997). Under AEDPA, federal
9 habeas corpus relief is available for any claim decided on the merits in state court
10 proceedings if the state court's adjudication of the claim:

11 (1) resulted in a decision that was contrary to, or involved an
12 unreasonable application of, clearly established federal law,
13 as determined by the Supreme Court of the United States; or

14 (2) resulted in a decision that was based on an unreasonable
15 determination of the facts in light of the evidence presented in
16 the State court proceeding.

17 28 U.S.C. § 2254(d).

18 **A. Standard of Review**

19 A state court decision is “contrary to” federal law if it “applies a rule that
20 contradicts governing law set forth in [Supreme Court] cases” or “confronts a set of facts
21 that are materially indistinguishable from” a Supreme Court case, yet reaches a different
22 result.” Brown v. Payton, 544 U.S. 133, 141 (2005) (citing Williams, 529 U.S. at 405-06).

23 “AEDPA does not require state and federal courts to wait for some nearly identical
24 factual pattern before a legal rule must be applied. . . . The statute recognizes . . . that
25 even a general standard may be applied in an unreasonable manner” Panetti v.
26 Quarterman, 551 U.S. 930, 953 (2007) (citations and quotation marks omitted). The
27 “clearly established Federal law” requirement “does not demand more than a ‘principle’
28 or ‘general standard.’” Musladin v. Lamarque, 555 F.3d 830, 839 (2009). For a state
decision to be an unreasonable application of clearly established federal law under

1 § 2254(d)(1), the Supreme Court's prior decisions must provide a governing legal
2 principle (or principles) to the issue before the state court. Lockyer v. Andrade, 538 U.S.
3 63, 70-71 (2003).

4 A state court decision will involve an “unreasonable application of” federal law
5 only if it is “objectively unreasonable.” Id. at 75-76 (quoting Williams, 529 U.S. at 409-
6 10); Woodford v. Visciotti, 537 U.S. 19, 24-25 (2002). “[A]n unreasonable application of
7 federal law is different from an incorrect application of federal law.” Harrington v. Richter
8 562 U.S. 86, 101 (2011) (citing Williams, 529 U.S. at 410) (emphasis in original). “A state
9 court's determination that a claim lacks merit precludes federal habeas relief so long as
10 ‘fairminded jurists could disagree’ on the correctness of the state court's decision.” Id.
11 (citing Yarborough v. Alvarado, 541 U.S. 653, 664 (2004)). Further, “[t]he more general
12 the rule, the more leeway courts have in reading outcomes in case-by-case
13 determinations.” Id.; Renico v. Lett, 130 S. Ct. 1855, 1864 (2010). “It is not an
14 unreasonable application of clearly established Federal law for a state court to decline to
15 apply a specific legal rule that has not been squarely established by [the Supreme
16 Court].” Knowles v. Mirzayance, 556 U.S. 111, 122 (2009).

17 **B. Requirement of Prejudicial Error**

18 In general, habeas relief may only be granted if the constitutional error
19 complained of was prejudicial. That is, it must have had “a substantial and injurious
20 effect or influence in determining the jury's verdict.” Brecht v. Abrahamson, 507 U.S.
21 619, 623 (1993); see also Fry v. Pliler, 551 U.S. 112, 121-22 (2007) (holding that the
22 Brecht standard applies whether or not the state court recognized the error and reviewed
23 it for harmlessness). Some constitutional errors, however, do not require a showing of
24 prejudice. See Arizona v. Fulminante, 499 U.S. 279, 310 (1991); United States v. Cronin,
25 466 U.S. 648, 659 (1984). Furthermore, claims alleging ineffective assistance of counsel
26 are analyzed under the Strickland prejudice standard; courts do not engage in a
27 separate analysis applying the Brecht standard. Strickland v. Washington, 466 U.S. 668
28

1 (1984); Avila v. Galaza, 297 F.3d 911, 918, n.7 (2002); Musalin v. Lamarque, 555 F.3d
2 830, 834 (9th Cir. 2009).

3 **C. Deference to State Court Decisions**

4 “[S]tate courts are the principal forum for asserting constitutional challenges to
5 state convictions,” not merely a “preliminary step for a later federal habeas proceeding.”
6 Richter, 562 U.S. at 103. Whether the state court decision is reasoned and explained, or
7 merely a summary denial, the approach to evaluating unreasonableness under
8 § 2254(d) is the same: “Under § 2254(d), a habeas court must determine what
9 arguments or theories supported or . . . could have supported, the state court's decision;
10 then it must ask whether it is possible fairminded jurists could disagree that those
11 arguments or theories are inconsistent with the holding in a prior decision of [the
12 Supreme Court].” Id. at 102. In other words:

13 As a condition for obtaining habeas corpus relief from a
14 federal court, a state prisoner must show that the state
15 court's ruling on the claim being presented in federal court
16 was so lacking in justification that there was an error well
understood and comprehended in existing law beyond any
possibility for fairminded disagreement.

17 Id. at 103. Thus, the Court may issue the writ only “in cases where there is no possibility
18 fairminded jurists could disagree that the state court's decision conflicts with [the
19 Supreme Court's] precedents.” Id. at 102.

20 “Where there has been one reasoned state judgment rejecting a federal claim,
21 later unexplained orders upholding that judgment or rejecting the claim rest on the same
22 grounds.” See Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991). Thus, the court will “look
23 through” a summary denial to the last reasoned decision of the state court. Id. at 804;
24 Plascencia v. Alameida, 467 F.3d 1190, 1198 (9th Cir. 2006). Furthermore, the district
25 court may review a habeas claim, even where the state court's reasoning is entirely
26 unexplained. Richter, 562 U.S. at 98. “Where a state court's decision is unaccompanied
27 by an explanation, the habeas petitioner's burden still must be met by showing there was
28

1 no reasonable basis for the state court to deny relief.” Id. (“This Court now holds and
2 reconfirms that § 2254(d) does not require a state court to give reasons before its
3 decision can be deemed to have been ‘adjudicated on the merits.’”).

4 **V. Review of Petition**

5 Petitioner argues that he invoked his Fifth Amendment right to remain silent when
6 he stated, during interrogation, “I’m done talking,” and “I just want to go back to my cell.”
7 (ECF No. 1 at 19.) Accordingly, Petitioner argues, the detectives violated Miranda by
8 continuing to question Petitioner, and his confession therefore should not have been
9 admitted.

10 Respondent argues that the state court could reasonably determine that
11 Petitioner’s statements were not unambiguous and unequivocal invocations of
12 Petitioner’s right to remain silent, and thus the state court’s rejection of this claim was not
13 contrary to or an unreasonable application of clearly established United States Supreme
14 Court precedent.

15 **A. State Court Decision**

16 The last reasoned decision of the state court summarily denied Petitioner’s
17 Miranda claim. The Court of Appeal rejected the claim as follows:

18 Flores contends he made an unequivocal and unambiguous
19 assertion of his right to silence when he asked to go back to
20 his jail cell. Flores argues the investigating officers violated
21 his Miranda rights and the trial court erred in failing to exclude
22 the statements he made during his interrogation after making
23 that request. Flores–Ventura, who filed his opening brief prior
24 to Flores, joined in Flores’s arguments pursuant to California
25 Rules of Court, rule 8.200(a)(5).

26 After the adoption in 1982 of former article I, section 28,
27 subdivision (d) of the California Constitution, California’s
28 appellate courts must apply federal standards to Miranda
issues. The reviewing court must accept the trial court’s
resolution of disputed facts and the inferences that can be
drawn from those facts, as well as the trial court’s evaluations
of credibility, if supported by substantial evidence. The
reviewing court “independently determine[s] from the
undisputed facts and the facts properly found by the trial

1 court whether the challenged statement was illegally
2 obtained.” (People v. Gonzalez (2005) 34 Cal.4th 1111,
3 1125.)

4 A suspect may not be subjected to custodial interrogation
5 unless he or she knowingly and intelligently has waived the
6 rights to remain silent and the presence of counsel, and the
7 right to appointed counsel if indigent. (People v. Dykes (2009)
8 46 Cal.4th 731, 751.) After being advised of his or her rights,
9 a suspect can validly waive them and respond to questioning.
10 (Edwards v. Arizona (1981) 451 U.S. 477, 484.)

11 If the suspect indicates at any time prior to or during
12 questioning that he or she wishes to remain silent or wants
13 an attorney, the interrogation must cease until an attorney is
14 present. (Miranda, supra, 384 U.S. at pp. 473–474.) “The
15 prosecution bears the burden of demonstrating the validity of
16 the defendant’s waiver [of Miranda rights] by a
17 preponderance of the evidence.” (People v. Williams (2010)
18 49 Cal.4th 405, 425; see People v. Dykes, supra, 46 Cal.4th
19 at p. 751.)

20 Where, as here, the defendant initially waives Miranda rights
21 and then requests counsel or seeks to end the interrogation,
22 the United States Supreme Court has set forth the standard
23 for courts to determine whether questioning should cease in
24 Davis v. United States (1994) 512 U.S. 452 (Davis). The
25 defendant in Davis was being interrogated by agents of the
26 Naval Investigative Service after being advised of and
27 waiving his Miranda rights. About an hour and a half into
28 questioning, the defendant said that maybe he should talk to
a lawyer. The agents asked him if he wanted a lawyer and
reminded the defendant of his right to remain silent. The
defendant said he thought he wanted a lawyer before he said
anything else. (Davis, supra, at p. 455.)

In Davis, the Supreme Court found that whether the suspect
has invoked his or her right to counsel is an objective inquiry.
If the suspect, however, makes a reference to an attorney
that is ambiguous or equivocal so that a reasonable officer in
light of the circumstances would have understood that the
suspect might be invoking the right to counsel, investigators
do not have to cease questioning. It is incumbent upon the
suspect to unambiguously request counsel. (Davis, supra,
512 U.S. at pp. 459–460.) The Supreme Court noted that
once the suspect has received Miranda warnings and there is
a knowing and voluntary waiver of them, this is sufficient to

1 dispel any coercion in the interrogation process. (Davis,
2 supra, 512 U.S. at p. 461.)

3 Applying the standard for postwaiver invocation of Miranda
4 rights set forth in Davis, the California Supreme Court
5 evaluated the claim of a juvenile who had been given
6 complete Miranda warnings and implicitly waived his rights by
7 answering questions by investigators. (People v. Nelson
8 (2012) 53 Cal.4th 367, 375–380 (Nelson.) The juvenile
9 sought to suppress statements he made after later telling
10 investigators he wanted to let his mother know where he was
11 and what was happening to him. The juvenile made a request
12 for counsel, but limited it to counsel's presence during a
13 polygraph test. Toward the end of questioning, the juvenile
14 stated several times he wanted to see his mother, he wanted
15 time to be alone until his family arrived, and he wanted time
16 to think about things before writing a statement concerning
17 what happened. (Id. at pp. 382–383.)

18 The court in Nelson found that under these circumstances,
19 the juvenile “did not convey an unambiguous request to halt
20 all questioning, or a clear unwillingness to continue . . .
21 without a lawyer.” (Nelson, supra, 53 Cal.4th at p. 382.)
22 Nelson further found that the invocation for counsel was
23 conditional to the application of a polygraph test. (Ibid.) It held
24 the juvenile defendant had failed to make an unambiguous
25 and unequivocal invocation of his Miranda rights and “[a]
26 reasonable officer in the circumstances would not have
27 understood defendant's requests to call his mother, or any of
28 his other statements, to be unambiguous and unequivocal
invocations of his Miranda rights.” (Id. at p. 383.) The court
concluded the investigators were not required to cease
questioning, and the defendant's custodial statements were
admissible at trial. (Id. at pp. 383–384.)

Flores does not challenge the initial advisement of Miranda
rights, or his waiver of them, prior to questioning by
investigators. As did the defendants in Davis and Nelson,
Flores asserts there was a violation of his Miranda rights after
he waived them and participated in questioning by the
investigators. Early during the interrogation, Flores said he
was done talking and shortly thereafter asked to be taken
back to his jail cell. Much later during questioning, Flores said
he wanted to go home. On each of these occasions,
however, Flores continued to engage in conversation with
investigators, continued to deny he was a cold-blooded killer,
and failed to clearly state either that he wanted an attorney or
he wanted to stop questioning. When investigators asked

1 Flores late into the interrogation whether he wanted to stop,
2 he replied he was “cool.”

3 Under the circumstances of this case, Flores failed to make
4 an unequivocal and unambiguous assertion that he wanted
5 counsel or that he wanted to stop talking to the investigators.
6 Two cases—one from the California Supreme Court and the
7 other from the Ninth Circuit Court of Appeals—involve nearly
8 identical facts to this case. In both cases the defendant asked
9 to be taken back to his cell, and it was held the statement
10 was not an unequivocal and unambiguous request to end
11 questioning. (People v. Rundle (2008) 43 Cal.4th 76, 114–
12 116 (Rundle), disapproved on another ground in People v.
13 Doolin (2009) 45 Cal.4th 390, 421, fn. 22; DeWeaver v.
14 Runnels (9th Cir. 2009) 556 F.3d 995, 1001–1002
15 (DeWeaver).)

16 Flores attempts to distinguish DeWeaver by arguing the
17 investigators here did not know Flores knew how to invoke
18 his right to silence. In light of the testimony from both Clark
19 and Zamudio that they did not perceive Flores's comments as
20 an invocation of his Miranda rights, and giving due deference
21 to the factual findings of the trial court, we find Flores's
22 attempt to distinguish DeWeaver to be unpersuasive.

23 This case is also directly analogous to People v. Stitely
24 (2005) 35 Cal.4th 514, 535 (Stitely), where the defendant
25 said he thought it was about time to stop talking. The
26 California Supreme Court held that a reasonable officer
27 would not find such a statement to be an unequivocal and
28 unambiguous request to terminate the interrogation. (Id. at p.
536.) We find Davis, Nelson, Stitely, Rundle, and DeWeaver
to be both persuasive and controlling authority. Flores's
statements seeking to go back to his jail cell and that he
should stop talking were not unequivocal and unambiguous
attempts to invoke his Miranda rights and to end further
interrogation. The trial court did not err in denying Flores's
motion to suppress his statements to investigators.

Flores, 2015 WL 3902037, at *6–7.

24 B. Applicable Law

25 In Miranda v. Arizona, 384 U.S. 436, 444 (1966), the United States Supreme
26 Court held that “[t]he prosecution may not use statements, whether exculpatory or
27 inculpatory, stemming from custodial interrogation of the defendant unless it
28

1 demonstrates the use of procedural safeguards effective to secure the privilege against
2 self-incrimination.” Thus, “suspects interrogated while in police custody must be told that
3 they have a right to remain silent, that anything they say may be used against them in
4 court, and that they are entitled to the presence of an attorney, either retained or
5 appointed, at the interrogation.” Thompson v. Keohane, 516 U.S. 99, 107 (1995);
6 Miranda, 384 U.S. at 473-74. Once Miranda warnings have been given, “all questioning
7 must cease” if a suspect makes a clear and unambiguous statement invoking his
8 constitutional rights. Smith v. Illinois, 469 U.S. 91, 98 (1984).

9 The waiver of Miranda rights may be express or implied. See North Carolina v.
10 Butler, 441 U.S. 369, 373-75 (1979). However, the invocation of the right to remain silent
11 and the right to counsel may not be ambiguous or equivocal. Berghuis v. Thompkins,
12 560 U.S. 370, 381-82 (2010). A suspect’s “simple, unambiguous” statement that he
13 “wanted to remain silent or that he did not want to talk with the police” is sufficient to
14 invoke his “right to cut off questioning.” Id. at 382 (citation omitted).

15 C. Analysis

16 1. Violation of Clearly Established Law

17 Here, there is no dispute that Petitioner knowingly, voluntarily, and intelligently
18 waived his Miranda rights at the outset of the interrogation. Thereafter, the officers
19 questioned Petitioner at some length regarding the shooting, and Petitioner denied
20 having any special knowledge of the incident.

21 Eventually, the following exchange occurred:

22 Q1: Tell the truth, tell the truth.

23 A: Tell the truth about what?

24 Q1: The dairy.

25 A: Well . . . I heard about the dairy.

26 Q1: Let’s start there. Again, just try it again. Try again. Just
27 try again.

1 Q1: Who were you there with?

2 A: I'm done talking.

3 Q: Y-You think we're bullshitting you?

4 Q1: Denying it, denying it.

5 Q1: Here's your chance.

6 Q: Jesus? Look at me please. You think I'm bullshitting
7 you about this?

8 (Lodged Doc. 8 at 15-16.)

9 Petitioner continued to deny any special knowledge of or involvement in the
10 incident. After detailed further questioning, the following exchange occurred:

11 Q: . . . You just gonna show us no respect, even though
12 we go out of our way to show you respect? You can answer
us something.

13 A: I just want to go back to my cell.

14 Q: You want to go back to your cell?

15 A: Yeah.

16 Q. Okay. You will very shortly. . . .

17 (Lodged Doc. 8 at 21.)

18 However, Petitioner did not go back to his cell. The officers continued to question
19 him, and Petitioner continued to deny involvement in the shooting. Eventually, the
20 officers began speaking to each other regarding arresting Petitioner for murder. (Lodged
21 Doc. 8 at 23.) They asked Petitioner what color the victim's eyes were and to describe
22 the sound the victim's screams made. They told Petitioner they didn't want to go to his
23 mother and tell her he was a cold blooded murderer. Eventually, an officer asked, "But
24 how responsible are you? How cold blooded of a killer are you?" (Lodged Doc. 8 at 25.)
25 Plaintiff responded, "It just happened." (Id.) After further questioning, Plaintiff provided
26 additional details regarding the shooting.
27
28

1 The Court begins with the first statement Plaintiff claims invoked his right to
2 silence. After having validly waived his Miranda rights, Petitioner stated to the officers,
3 “I’m done talking.” Courts having considered the issue have concluded that such a
4 statement represents a clear, unambiguous, and unequivocal invocation of the right to
5 remain silent. Jones v. Harrington, 829 F.3d 1128, 1141 (9th Cir. 2016) (holding that
6 statement “I don’t want to talk no more” was unambiguous invocation of right to remain
7 silent.); United States v. Heine, No. 3:15-CR-238-SI-1, 2016 WL 6808595, at *23 (D. Or.
8 Nov. 17, 2016) (holding that statement, “I really don’t want to talk anymore” was
9 unambiguous invocation of right to remain silent). The statement was not qualified by
10 any hallmarks of equivocation, such as “maybe” or “might” or “I think.” Jones, 829 F.3d at
11 1140; Arnold v. Runnels, 421 F.3d 859, 865 (9th Cir. 2005) (words such as “maybe” or
12 “might” can render statements ambiguous); see also Davis v. United States, 512 U.S.
13 452, 462 (1994) (holding that phrase, “maybe I should talk to a lawyer” was ambiguous);
14 Clark v. Murphy, 331 F.3d at 1062, 1072 (9th Cir. 2003) (holding that phrase, “I think I
15 would like to talk to a lawyer” was ambiguous).

16 Additionally, Petitioner did not state, “I’m done talking now” or “I’m done talking to
17 you,” statements which might have cast doubt on whether Plaintiff truly wished to remain
18 entirely silent. Nor did Petitioner follow this statement with questions or other indications
19 that he desired to talk further. None of the circumstances of the interrogation cast doubt
20 on whether the statement “I’m done talking” reflected anything other than Petitioner’s
21 desire to remain silent. Indeed, the Court is unable to come up with any reasonable
22 interpretation of the phrase “I’m done talking” that does not express a desire to remain
23 silent.

24 Respondent presents two grounds for concluding the statement was ambiguous.
25 First, Respondent argues that “a reasonable officer could have concluded that this
26 remark was simply a comment that there was no more he wanted to say at that time or
27 about a certain subject,” and that the statement was merely an expression of frustration.

1 Again, however, the statement itself contains no such equivocation. Second,
2 Respondent points out that Petitioner continued to converse after having stated, “I’m
3 done talking.” This second point, however, is irrelevant. It is well-settled, and was well-
4 settled at the time of the events at issue here, that the Court may not look “to post-
5 invocation statements to ‘cast retrospective doubt on the clarity of [Petitioner’s] initial
6 request itself.’” Jones, 829 F.3d at 1140 (quoting Smith v. Illinois, 469 U.S. 91, 98–99
7 (1984)).

8 Based on the foregoing, the Court concludes that the statement, “I’m done talking”
9 was an unequivocal and unambiguous invocation of Petitioner’s right to remain silent.²
10 The California Court of Appeal’s conclusion that this statement was ambiguous is
11 contrary to and an unreasonable application of Miranda. 28 U.S.C. § 2254(d)(1);
12 Miranda, 384 U.S. at 473–74, 86 S.Ct. 1602 (holding that the right to remain silent can
13 be invoked “any time prior to or during questioning”).

14 **2. Harmlessness**

15 The “actual prejudice” standard set out in Brecht v. Abrahamson, 507 U.S. 619
16 (1993), applies to the Court’s Miranda error. Under Brecht, the constitutional error
17 complained of must have had “a substantial and injurious effect or influence in
18 determining the jury’s verdict.” Id. at 623; see also Fry v. Pliler, 551 U.S. 112, 121-22
19 (2007) (holding that the Brecht standard applies whether or not the state court
20 recognized the error and reviewed it for harmlessness). “This standard is satisfied if the
21 record raises ‘grave doubts’ about whether the error influenced the jury’s decision.”
22 Jones, 829 F.3d at 1141 (quoting Davis v. Ayala, 135 S. Ct. 2187, 2203 (2015)).

23 In many cases, the prejudice caused by the failure to suppress statements taken
24 in violation of Miranda will be insurmountable. “A confession is like no other evidence.

25 _____
26 ² Thus, all questioning should have ceased at this point in the interrogation, and the Court therefore need
27 not consider whether the later statement, “I just want to go back to my cell,” also constituted a separate
28 invocation of the right to remain silent. The Court notes, however, that similar statements have been held
insufficient to clearly and unambiguously invoke constitutional rights. See Welch v. Harrington, No. CV 09-
01041-JVS JEM, 2010 WL 4794237, at *4 (C.D. Cal. Oct. 18, 2010), report and recommendation adopted,
2010 WL 4794236 (C.D. Cal. Nov. 17, 2010).

1 Indeed, ‘the defendant’s own confession is probably the most probative and damaging
2 evidence that can be admitted against him.’” Arizona v. Fulminante, 499 U.S. 279, 296
3 (1991). Because a confession may have a “profound impact” on the jury, the Court must
4 “exercise extreme caution before determining that the admission of the confession at trial
5 was harmless.” Id.

6 The Ninth Circuit has recognized that erroneously admitted evidence is likely to
7 be found prejudicial when the prosecutor emphasizes the importance of that evidence
8 during closing arguments. See Garcia v. Long, 808 F.3d 771, 782–84 (9th Cir. 2015)
9 (admission of audiotape of petitioner’s three and half hour interrogation and letter written
10 during interrogation was not harmless despite other evidence implicating him in charged
11 crime, in part, because the petitioner’s statements “were the focal point of the
12 prosecution’s closing argument”); Jones, 829 F.3d at 1142 (admission of petitioner’s
13 confession obtained in violation of his right to remain silent was not harmless, in part,
14 because prosecutor, in closing arguments, repeatedly referred to petitioner’s statements
15 and told jury that it “could convict beyond a reasonable doubt based only on [petitioner’s]
16 own statements”).

17 Here, the defense conceded that Petitioner had committed the murder, but
18 disputed the degree of murder. In this regard, the prosecution relied in closing on
19 statements taken in violation of Miranda to show that the murder was premeditated, that
20 it was committed by lying in wait, and that it occurred during the conduct of a robbery.
21 However, even setting aside the statements taken in violation of Miranda, the evidence
22 against Petitioner was substantial. The shooting itself was video recorded. The video is
23 described as portraying Petitioner rushing into the dairy, with his face covered, and
24 immediately starting to shoot. The video was described as showing that the firearm had
25 a “catcher” to catch the spent casings. The prosecution relied on this evidence to support
26 the premeditation and lying-in-wait theories. This evidence is not “weak tea” compared
27 with Petitioner’s own words admitting the crime. See Jones, 829 F.3d at 1142

1 (describing the defendant’s “confusing comments about his whereabouts” at the time of
2 the crime as “weak tea” compared with defendant’s confession). Although the evidence
3 regarding the lying-in-wait special circumstance, in particular, is rendered somewhat
4 weaker by the absence of Petitioner’s confession, the Court nonetheless cannot say that
5 it has “grave doubts” that the jury would have reached the same verdict absent this
6 evidence.

7 Furthermore, this was not the only evidence presented against Petitioner, nor was
8 it the only evidence focused on by the prosecution. Petitioner also confessed to his
9 friend Miguel that he went to the dairy to collect money, that he had carried out the
10 shooting, and that he did it because he “had to.” Miguel testified against Petitioner at
11 trial. Petitioner also confessed to his friend Chino that “he did the job” at the dairy and
12 that he did it because a “guy owed me money,” but that guy wasn’t there. Instead, the
13 “guy that I killed, it was not his problem. It was not his problem.” (Lodged Doc. 7 at 70,
14 73, 82-83.) These statements were recorded and played for the jury in Spanish. The jury
15 was presented with an English-language transcript of the discussion. While the
16 prosecutor did rely in closing on Petitioner’s statements to officers, the prosecutor
17 identified the conversation with Chino as the “one conversation that really is key.”
18 (Lodged Doc. 20 at 3422.) Indeed, the prosecutor cited largely to the recorded
19 conversations with Chino as proof of the elements of the crime.

20 Although the Court clearly recognizes the profound impact a confession may have
21 on the jury, in the circumstances of this case, the confession was not necessarily the
22 most persuasive evidence. Based on the foregoing analysis, the Court concludes that
23 admission of the confession was harmless. Petitioner is not entitled to relief.

24 **VI. Conclusion and Recommendation**

25 Based on the foregoing, it is HEREBY RECOMMENDED that the petition for writ
26 of habeas corpus be DENIED.

27
28

1 The findings and recommendation are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
3 **thirty** (30) days after being served with the findings and recommendation, any party may
4 file written objections with the Court and serve a copy on all parties. Such a document
5 should be captioned "Objections to Magistrate Judge's Findings and Recommendation."
6 Any reply to the objections shall be served and filed within fourteen (14) days after
7 service of the objections. The parties are advised that failure to file objections within the
8 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772
9 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
10 1991)).

11
12 IT IS SO ORDERED.

13 Dated: April 16, 2018

14 /s/ Michael J. Seng
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28