

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
2 *de novo* review of this case. Having carefully reviewed the entire file, the undersigned declines to
3 adopt the findings and recommendations at this time. Rather, the undersigned finds petitioner’s
4 objections, at least in part, to be potentially well taken. Specifically, as petitioner’s objections
5 point out, petitioner specifically alleged in his pending petition and in his traverse that the
6 California Court of Appeal relied on “material factual . . . errors” in affirming the state trial
7 court’s judgment and “unreasonably determined facts” in rejecting both petitioner’s eyewitness
8 identification and prosecutorial misconduct claims, as well as in its harmless error analysis. (Doc.
9 Nos. 18 at 12, 24, 35, 41; 21 at 4.) Petitioner argues in his objections that the pending findings
10 and recommendations misinterpreted and/or overlooked his claim that the California Court of
11 Appeal decision was based on an unreasonable determination of the facts in light of the evidence
12 presented. (Doc. No. 21 at 4.) The undersigned agrees that the pending findings and
13 recommendations do not meaningfully engage the substance of petitioner’s claim that the state
14 court erroneously rejected his claims based upon an unreasonable determination of the facts in
15 light of the evidence presented in the state court proceedings.¹

16 Because petitioner’s allegations challenging the state court decision as having been based
17 upon an unreasonable determination of the facts are material to whether petitioner received due
18 process in the state court proceedings, the undersigned will refer the matter back to the now-
19 assigned magistrate judge for issuance of amended or supplemental findings and
20 recommendations.

21 ¹ The pending findings and recommendations refer to this aspect of petitioner’s collateral
22 challenge to his state court conviction only in passing:

23 Petitioner does not claim that the Court of Appeal decision was
24 “based on an unreasonable determination of the facts in light of the
25 evidence presented,” and we do not believe it was. Even assuming
26 that the Court of Appeal decision contained omissions or
misinterpretations of the factual record, the alleged errors are small
and could have led to no “unreasonable determination” of the facts.

27 (Doc. No. 20 at 20, n.4). It appears to the undersigned that petitioner has consistently asserted in
28 these federal habeas proceedings an “unreasonable determination of the facts” challenge to the
state court judgment. If so, a more thorough review and analysis of that claim is called for here.

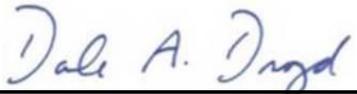
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Accordingly,

1. The undersigned at this time declines to adopt the findings and recommendations issued on June 24, 2020 (Doc. No. 20); and
2. This case is referred back to the assigned magistrate judge for the issuance of amended or supplemental findings and recommendations, addressing the issues raised in petitioner's objections (Doc. No. 21).

IT IS SO ORDERED.

Dated: September 7, 2021


UNITED STATES DISTRICT JUDGE