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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY GRANT FRYE,

Petitioner,

No. CIV S-99-0628 LKK KJM

vs.

DEATH PENALTY CASE

WARDEN, San Quentin  
State Prison,

Respondent.

ORDER

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This court permitted petitioner to brief his challenge to the evidentiary hearing testimony, taken by deposition, of respondent’s witness Sgt. Eric Bryson. Sept. 11, 2009 Order at 2-3. Petitioner has done so. (Docket No. 507.) Respondent filed a responsive brief. (Docket No. 509.) Petitioner argued the court should disregard Sgt. Bryson’s testimony that petitioner was charged with, or otherwise connected to, more than one burglary because Sgt. Bryson refers to only one burglary in his April 24, 2008 declaration. Petitioner identifies statements by Sgt. Bryson about these additional burglaries at pages 7, 18 and 14 to 17 of the transcript of his August 28, 2008 Deposition. (Docket No. 386.)

Respondent argues that the statement in Sgt. Bryson’s declaration that petitioner was used as an informant “because of his criminal ties and his life-style of committing crime” is

1 broad enough to cover these other burglaries. See Apr. 24, 2008 Decl. of Eric Bryson (Docket  
2 No. 273, Ex. B). Respondent further argues that the precise number of charges against petitioner  
3 is immaterial because the importance of Sgt. Bryson's testimony is that petitioner was motivated  
4 by self-interest to help Indiana police.

5           The parties do not dispute that Sgt. Bryson mentions only one burglary charge in  
6 his declaration. To the extent Sgt. Bryson's testimony is, as respondent says, important to show  
7 petitioner's motivation to help the police, then petitioner's motivation to avoid multiple burglary  
8 charges as opposed to only one is material. Multiple charges likely would have exposed  
9 petitioner to a more severe sentence than one charge.

10           The court finds Sgt. Bryson's reference to multiple burglary charges materially  
11 adds to the information provided in his declaration. For the reasons described in the September  
12 11, 2009 Order, the court will disregard those references at pages 7, 18 and 14 to 17 of the  
13 transcript of Sgt. Bryson's August 28, 2008 Deposition.

14           IT IS SO ORDERED.

15 DATED: July 22, 2010.

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18 U.S. MAGISTRATE JUDGE  
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