

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has
2 conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
3 court finds the findings and recommendations to be supported by the record and by
4 proper analysis.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The findings and recommendations filed April 12, 2012 (ECF No. 114), are
7 ADOPTED in full;

8 2. With respect to the claims respondent challenges as unexhausted, the
9 court holds as follows:

10 a. Claim 1 is exhausted.

11 b. The Eighth Amendment aspect of claim 22, including the argument
12 that the polygraph reference violated petitioner's right to a non-arbitrary penalty
13 determination, is not exhausted. To the extent petitioner's argument in claim 22
14 regarding his right to a proper application of state evidentiary rules fundamentally differs
15 from his argument of trial court error, it is unexhausted. In all other respects, claim 22 is
16 exhausted.

17 c. The Sixth and Eighth Amendment aspects of claim 23 are not
18 exhausted. In all other respects, claim 23 is exhausted.

19 d. The Sixth and Eighth Amendment aspects of claim 24 are not
20 exhausted. In all other respects, claim 24 is exhausted.

21 e. The Sixth and Eighth Amendment aspects of claim 25 are not
22 exhausted. To the extent petitioner's argument in claim 25 regarding his right to a proper
23 application of state evidentiary rules fundamentally differs from his argument of trial court
24 error, it is unexhausted. In all other respects, claim 25 is exhausted.

25 f. The Sixth and Eighth Amendment aspects of claim 26 are not
26 exhausted. In all other respects, claim 26 is exhausted.

27 g. The Sixth and Eighth Amendment aspects of claim 27 are not
28 exhausted. In all other respects, claim 27 is exhausted.

1 h. The Sixth and Eighth Amendment aspects of claim 28, including
2 arguments regarding petitioner's rights to confrontation and to a non-arbitrary verdict,
3 are not exhausted. To the extent petitioner's argument in claim 28 regarding his right to
4 a proper application of state evidentiary rules fundamentally differs from his argument of
5 trial court error, it is unexhausted. In all other respects, claim 28 is exhausted.

6 i. The Eighth Amendment aspect and the argument that petitioner was
7 arbitrarily deprived of a state law entitlement in claim 31 are not exhausted. To the
8 extent petitioner's argument in claim 31 regarding his right to trial by jury differs
9 fundamentally from his Due Process and Confrontation Clause arguments, it is
10 unexhausted. In all other respects, claim 31 is exhausted.

11 j. The Fifth and Sixth Amendment aspects of claim 32 are not
12 exhausted. In all other respects, claim 32 is exhausted.

13 k. Claim 33 is exhausted.


14 l. Claim 34 is exhausted.

15 m. The argument in claim 35 that petitioner was arbitrarily deprived of a
16 state law entitlement is not exhausted. In all other respects, claim 35 is exhausted.

17 n. The argument in claim 39 that petitioner was arbitrarily deprived of a
18 state law entitlement is not exhausted. In all other respects, claim 39 is exhausted.

19 o. As currently stated, claim 49 is not exhausted. If petitioner deletes
20 the reference to claim 31 in claim 49, this court would find claim 49 exhausted.

21 Dated: November 19, 2013

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25 MORRISON C. ENGLAND, JR., CHIEF JUDGE
26 UNITED STATES DISTRICT COURT
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