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

TRINA RENEE SANDERS,	)	
	)	No. CV-07-cv-154 RHW JPH
Petitioner,	)	
	)	ORDER DENYING WRIT OF HABEAS
v.	)	CORPUS
	)	
STATE OF CALIFORNIA,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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**BEFORE THE COURT** is a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a person in state custody (Ct. Rec. 1, amended at Ct. Rec. 22), Respondent’s answer (Ct. Rec. 28), and Petitioner’s reply (Ct. Rec. 29). Randi Dana Covin represents Petitioner. Respondent is represented by Deputy Attorney General Judy Kaida. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8.) This matter was heard without oral argument. After careful review and consideration of the pleadings submitted, it is ordered that the Petition for Writ of Habeas Corpus be **denied**.

At the time her petition was filed, Petitioner was in custody in Chowchilla, California, pursuant to her 2004 San Joaquin County

1 conviction for first degree murder. (Ct Rec. 1 at p. 1.)

2 Petitioner challenges the 2004 San Joaquin County conviction.

3 (Ct. Rec. 1.)

4 **I. BACKGROUND**

5 **A. Factual History**

6 The Third District Court of Appeal described the facts:

7 In September 2002, defendant moved into the Stockton  
8 apartment of her daughter Alisha Brown, Brown's infant son,  
9 and Brown's fiancé Jason Santos. Defendant's husband had died  
10 and she had "lost" her house.

11 Defendant and Santos did not get along and they argued  
12 frequently. Santos and Brown also argued and some of their  
13 arguments were based on Santos's dislike of defendant and his  
14 desire for her to move out of their apartment.

15 In the morning of November 9, 2002, defendant noticed  
16 that her car had been broken into and the pink slip and  
17 registration were missing. She came back into the apartment  
18 and looked at Santos accusingly. Brown and Santos denied he  
19 was involved. Defendant left the apartment.

20 That afternoon Santos, Brown and the baby went clothes  
21 shopping. On the way home they stopped at a bar where Santos  
22 and Brown drank shots of tequila.

23 They returned to the apartment at approximately 7:00  
24 p.m. Defendant arrived shortly thereafter in a happy mood.  
25 Brown told Defendant they had been drinking so defendant left  
26 to buy herself beer.

27 After defendant left, Santos asked Brown to dance  
28 with him. When she refused, Santos became "mad" and called  
Brown a "bitch." He came toward her and she thought he was  
going to hit her. In response, Brown hit Santos in the head  
with a Lego box, cutting him in the forehead.

When defendant returned from the store, Santos and  
defendant began arguing in the living room. Brown did not  
know what the argument was about. She tried to act as  
"mediator," but they would not "shut up." Santos left the  
apartment to get more beer. That night Santos made three  
trips to buy beer.

When Santos returned from his last trip to the store,  
he could barely stand up and was slurring his words. He  
sat on the couch with his body hunched over and his legs

1 spread apart. Defendant, who was in the kitchen, told  
2 Santos she "was going to have somebody come and kick his  
3 ass."

3 Santos stumbled into the kitchen, rummaged through  
4 the knife drawer, and said, "I'm not going to have nobody  
5 come fuck me up." Before Santos had a chance to grab  
6 anything, Brown hit him over the head twice with the  
7 telephone and knocked him over. She sat on top of his chest,  
8 choked him, and told him she was not going to get up until he  
9 calmed down. Santos kept kicking his feet and moving his  
10 arms.

11 Brown told defendant to get the knife out of the  
12 drawer and hide it. Instead, defendant held the knife in  
13 her hand. Brown then asked defendant to grab the baby  
14 because Brown did not want her son to see her sitting on  
15 top of Santos. Defendant asked Brown if she wanted her to get  
16 the baby a bottle of milk. Brown replied, "Yes." With a knife  
17 in her right hand and a baby bottle in her left hand,  
18 defendant tried to force open the refrigerator door. Santos's  
19 feet were blocking the door. Defendant placed the bottle on  
20 the stove and reached into the refrigerator to grab the milk.  
21 Santos kicked the refrigerator, bruising defendant's arm.  
22 Defendant said she was going to call Brown's father and asked  
23 Brown to call 911. Brown told defendant there was no need to  
24 call 911.

25 Defendant started "chopping" at Santos's legs with  
26 the knife. Brown asked defendant what she was doing, told  
27 defendant to stop, and put her arm in the way. Defendant  
28 nicked Brown with the knife and then stopped because she  
thought she had cut Brown.

Brown got off of Santos after he promised not to hit  
her. The two sat down on the couch and looked at each  
other. The argument had stopped and Santos was calm.

Defendant still had the knife in her hand. She was  
upset that Brown and Santos had made up. Defendant said,  
"[O]h, my God," and walked off. She went into the kitchen  
and started sharpening two knives. One was the kitchen  
knife that belonged to Brown and the other was a knife  
that belonged to defendant. Defendant walked over to  
Santos, put the kitchen knife to her crotch, and asked,  
"You want me to fuck you with this? I know your kind."  
Santos paid no attention and looked at Brown. Defendant  
walked back into the kitchen, continued sharpening the  
knives, and "taunt[ed] Santos, saying, "I got dead aim,  
I got dead aim."

Santos got up, stumbled toward Brown and told her,  
"You will always be my girl and Diego [the baby] will

1 always be my son." Defendant looked at Santos and told  
2 him, "I know you want me, I seen the way you look at . . .  
3 me when you come out [of] the room." Santos threw a beer  
4 can at the wall and said, "Shut up. Just shut up, bitch."  
5 He told Brown he was "not like that" and told defendant,  
6 "I love you, but I don't like you."

7 Defendant had "an evil grin" and was holding a knife.  
8 Brown thought defendant "looked like she was about to do  
9 something" so Brown ran in between defendant and Santos  
10 and told him to leave the apartment because defendant was  
11 going to stab him. Santos responded, "I'm not going  
12 nowhere. She ain't going to stab me."

13 With two knives in her hands, defendant walked  
14 through the living room. Brown, who had the baby in one  
15 hand, pushed Santos into the desk to get him away from  
16 defendant. Defendant tried to stab Santos three or four  
17 times but missed because Brown had knocked Santos into the  
18 desk. Brown screamed at defendant to "stop, stop, stop"  
19 and asked what she was doing. Santos pushed Brown and the  
20 baby out of the way. Defendant stepped closer to Santos  
21 and stabbed him.

22 Bleeding, Santos walked into the bedroom and was  
23 face down on the bed. Brown followed Santos and tried to  
24 help him breathe. Brown told defendant, "Mama, you  
25 punctured his lungs. Why you kill him? Why you kill him?"  
26 Defendant got a towel from the closet, threw it on top of  
27 Santos's body, and directed Brown to "Cover his wound."

28 Defendant called 911. According to the police officer  
who answered the call, defendant yelled "hysterical[ly]"  
that "she just stabbed a mother fucker in the shoulder."

Stockton Police Officer David Reeder was dispatched  
to the apartment. There was blood on the kitchen floor and  
wall. On the countertop was a large butcher knife with  
blood on the blade. Reeder followed the blood trail  
through a small hallway into the bedroom where he found  
Santos. The mattress around Santos's head was soaked in  
blood. There was a "knife cut" in his shirt and a two-inch  
laceration on his chest. Santos was dead.

Defendant said, "I did it, take me." Officer Kevin  
Tyler handcuffed defendant and brought her to his patrol  
car. She was crying and visibly upset. She smelled of  
alcohol but did not appear to be intoxicated. En route to  
the "Essential Services Building," defendant repeatedly  
asked if Santos was all right and whether she had killed  
him. She said that she did not want to kill him, he had  
thrown a beer can at her and made her angry, she stabbed  
him, and she knew she was going to jail for murder or  
attempted murder.

1  
2 An autopsy was performed on November 10, 2002. There  
3 was a nine and one-half inch stab wound on Santos's right  
4 upper chest. There were bruises below the stab wound that  
5 were consistent with the stabber thrusting the knife into  
6 Santos's body with such force that the stabber's fist  
7 bruised Santos's body. Santos died of shock and  
8 hemorrhaging. Santos must have become unconscious 30  
9 seconds to one minute after the wound was inflicted and he  
10 would have died "shortly thereafter."

#### 11 The Defense

12 Defendant testified on her own behalf at trial. The  
13 morning before the stabbing, Santos pulled a knife on her  
14 and Brown and said, "I could kill both of you." Defendant  
15 responded, "I ain't a [sic] scared of you."

16 The evening of the stabbing, defendant went to the  
17 store twice to buy beer. When she returned from the first  
18 trip, Brown and Santos were arguing, but she did not  
19 "pay[] much attention to it because they always argue." When  
20 she returned from the second trip, Santos was wiping his head  
21 and Brown had a Lego bucket in her hand. Brown said, "he  
22 tried to swing at me and I hit him in the head with the  
23 bucket."

24 Brown told defendant to "get the knives so he won't  
25 get them." Defendant went into the kitchen and retrieved  
26 one knife from the drawer and retrieved a folding knife  
27 from her bag that was between the couch and the table.  
28 Defendant told Brown to call 911 and Brown responded, "No,  
29 Mom, don't call 911." Defendant picked up her telephone  
30 but it did not work. She fixed the telephone line and put  
31 the knife down. Defendant prepared to hand the telephone  
32 to Brown when defendant was pushed against the sink from  
33 behind. Brown "threw" Santos on the floor in front of the  
34 refrigerator. Brown sat on him, choked him, and told him  
35 she wanted him to leave.

36 Defendant told Santos, "You stupid idiot, you trying  
37 to fight her. I told you one day she'd over power you."  
38 The baby started crying and defendant announced she was  
39 going to prepare a bottle for the baby. Santos, whose feet  
40 had been against the refrigerator, pulled back his feet as  
41 though to accommodate the defendant. Instead, when defendant  
42 reached into the refrigerator to get the milk, Santos pushed  
43 the refrigerator door with his feet "really hard" and pinned  
44 her in the refrigerator. Defendant grabbed a knife and  
45 started swinging it but could not reach Santos. She started  
46 hitting his legs with the heel of her foot.

47 Santos kept telling Brown he loved her. Brown asked  
48 Santos, "If I let you up, you're not going to swing at

1 anybody?" Defendant told Brown, "Don't let him up. Let me  
2 call 911." Santos and Brown told defendant not to make the  
3 call and she complied. Defendant then tried to call her  
oldest daughter and the daughter's father but they were  
not home.

4 Brown got off of Santos, which "startled" defendant.  
5 Defendant told Santos to leave ut he sat on the couch and  
6 said, "I ain't going no fucking where." Defendant was in  
7 the kitchen and she and Santos were "fussing back and  
8 forth." She was not sure whether she "started on" him or he  
9 "started on" her. She called him a "[p]unk" and "faggot" and  
10 he called her a "bitch" and "slut." He threw three or four  
11 Lego or domino pieces at her. Defendant, who still had the  
knives, told Santos that he should leave, that she would  
throw "it" at him, and that "I bet I'll stick you." She told  
Brown to tell him to "quit throwing those dominos at me  
because I have dead aim." Santos complied with defendant's  
request but told her he was going to "fuck [her] up."  
Defendant responded, "you ain't fucking nobody up, I'll fuck  
you up."

12 Cussing, Santos approached defendant and "got kind of  
13 too close to [her]." Defendant started backing up. He  
14 threw a beer at her. It "skimmed" her and hit the wall. He  
15 grabbed the baby and used him as a shield. Defendant told  
16 Brown to get the baby away from Santos. Brown grabbed the  
17 baby and pushed Santos, saying, "She's going to stab you."  
18 Santos said, "Your mother ain't gonna do shit to me" and  
19 then swung at defendant but missed.

20 Defendant "went around the divider" and stabbed  
21 Santos in the shoulder. The knife went in all the way.  
22 Santos ran into the bedroom and defendant called 911.  
23 While on the telephone, she heard Brown screaming louder  
24 and louder. She put the telephone down and examined  
25 Santos's wound. Defendant did not see blood coming from  
26 the wound, thought Santos was "all right," and went back  
27 to the telephone.

28 Defendant had felt threatened by Santos and thought he  
was going to do something to her or Brown. She intended to  
"stop" Santos when she "poke[d]" him with the knife. She  
did not want to kill him.

During cross-examination, defendant acknowledged she  
had told police, "It's my fault. I struck him with the  
knife because he hit me with a beer. And I lost my temper  
and I just started sticking him. I kept trying to stick  
him because I just got tired."

Defendant also acknowledged telling a defense  
investigator that Santos was mean to her, had called her  
a "crack mother," and "cuss[ed]" at her. She believed Santos

1 was jealous of her and Brown's relationship. Santos told her  
2 more than once that he did not want her living in the  
3 apartment. She believed Santos treated Brown "like hell" and  
4 was "just an asshole."

5 In August 2003, psychologist Dr. Nancy Kaser-Boyd  
6 administered a series of tests to defendant, conducted a  
7 "fairly" long evaluation of her, and reviewed her mental  
8 health records from Fresno County and much of the  
9 "discovery" in this case. It was Dr Kaser-Boyd's opinion  
10 defendant suffered from chronic post traumatic stress  
11 disorder (PTSD).

12 Dr. Kaser-Boyd recounted that defendant grew up in a  
13 home with "extreme violence." On one occasion, her father  
14 beat her brother with a baseball bat. On another occasion,  
15 her father shot at defendant, narrowly missing her. When  
16 defendant was six years old, she was sexually abused by a  
17 stepbrother. When she was 12 or 13 years old, she and a  
18 girlfriend were kidnapped by two men and were beaten and  
19 raped repeatedly. She later had a relationship with a man who  
20 was violent toward her and the children. Defendant's first  
21 child was born one month prematurely because her then husband  
22 "liked forceful sex." Her second child was born two months  
23 prematurely "[b]ecause her raped [her]."<sup>1</sup>

24 Dr. Kaser-Boyd said it was rare for people to come  
25 through these events without a mental disorder. Most  
26 typically, these victims suffer PTSD. The symptoms of PTSD  
27 are: (1) "reexperiencing," i.e., flashbacks, nightmares,  
28 profound helplessness, incredible vulnerability, and fear;  
29 (2) "avoidance symptoms," i.e., forcing oneself not to think  
30 about the traumatic memories or numbing oneself with alcohol  
31 or psychiatric medication; and (3) "hyperarousal symptoms"  
32 such as hypervigilance. PTSD victims can see a threat where  
33 people who did not suffer PTSD would not see a threat.

34 Santos's mother testified that in 1998, Santos grabbed  
35 her by the shoulders and pushed her toward the kitchen  
36 floor and the refrigerator door. Santos was arrested for  
37 battery.

38 Also in 1998, Santos repeatedly hit his then-  
39 girlfriend Sandra Gill on her face and told her that he  
40 was going to "F" her up after the two had an argument  
41 about Santos's loud music.

42 (Lodged Doc. D, Attached Appendix at 2-12.)

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43 <sup>1</sup>Dr. Kaser-Boyd admitted during cross-examination that,  
44 for 14 or 15 years, defendant lived with a man who never  
45 abused or mistreated her. (Original fn 5.)

1 **B. Procedural History**

2 As indicated, after a jury trial in San Joaquin County,  
3 California Superior Court, the Petitioner was found guilty of  
4 first degree murder with personal use of a knife.<sup>2</sup> (Clerk's  
5 Transcript at 368-369.) The trial court sentenced defendant to 26  
6 years to life. (Clerks' Transcript at 395.) After trial,  
7 defendant appealed and the Third Appellate District affirmed.  
8 (Lodged Document D at attached appendix 1-12.) The California  
9 Supreme Court denied Ms. Sanders's petition for review on November  
10 2, 2005. (Lodged Document E.)

11 On August 18, 2006, Ms. Sanders filed a petition for a writ  
12 of habeas corpus in the San Joaquin County Superior Court. (Ct.  
13 Rec. 11 at 28-111.) The court denied her petition on October 11,  
14 2006. (Ct. Rec. 11 at 22-24.) An amended order denying the  
15 petition was filed November 7, 2006. (Ct. Rec. 11 at 25-26.) On  
16 December 15, 2006, Ms. Sanders filed a petition for a writ of  
17 habeas corpus in the California Supreme Court. (Lodged Doc. F.)  
18 The court denied the petition on June 7, 2007. (Lodged Doc. G.)

19 On January 24, 2007, Ms. Sanders filed the federal habeas  
20 petition. (Ct. Rec. 1.) Ms. Sanders's reply notes that, because  
21 her original federal petition raised two exhausted claims, she was  
22 granted a stay of these proceedings in order to exhaust four  
23 additional claims. (Ct. Rec. 29 at 5-6; Ct. Rec. 16; Ct. Rec. 19.)  
24 After the stay was lifted, Ms. Sanders filed the current amended  
25 petition. (Ct. Rec. 22.)

26 **C. Federal and state claims**

27 \_\_\_\_\_  
28 <sup>2</sup>in violation of Cal. Penal Code, § 187, 12022(b).



1 In her federal habeas petition, Ms. Sanders raises the  
2 following claims:

3 Federal habeas claim one: Insufficient evidence of malice  
4 aforethought and premeditation, together with compelling evidence  
5 of imperfect self-defense and heat of passion, resulted in a  
6 conviction violating due process. (Ct. Rec. 22 at 5.)

7 Federal habeas claim two: Because the trial court excluded  
8 testimony from Ms. Sanders about her prior abuse, she was deprived  
9 or her right to present a defense and to due process of law. (Ct.  
10 Rec. 22 at 6.)

11 Federal habeas claim three: Trial counsel's assistance fell below  
12 Sixth Amendment standards because he failed to present Sylvia  
13 Roiland's testimony. She would have corroborated Ms. Sanders's  
14 contradicted testimony that Mr. Santos threatened both Alisha  
15 Brown and Ms. Sanders with a knife the day before the homicide.  
16 (Ct. Rec. 22 at 6.)

17 Federal habeas claim four: Trial counsel's assistance fell below  
18 Sixth Amendment protections when he failed to present expert  
19 testimony on Battered Woman's Syndrome. (Ct. Rec. 22 at 6-7.)

20 Federal habeas claim five: Trial counsel's assistance fell below  
21 Sixth Amendment protections when he failed to present the  
22 testimony of Lesa Brown and Sylvia Roiland to corroborate Ms.  
23 Sanders's reported abuse. (Ct. Rec. 22 at 7.)

24 Federal habeas claim six: Trial counsel's assistance fell below  
25 Sixth Amendment standards when he failed to elicit testimony from  
26 Ms. Sanders about her PTSD symptoms and fear of Mr. Santos. (Ct.  
27 Rec. 22 at 8.)

1 In the state's highest court rendering a reasoned decision,  
2 Ms. Sanders raised the following issues:

3 State court claim one: Petitioner's conviction violated due  
4 process because "there was insufficient evidence of malice  
5 aforethought and premeditation and compelling evidence of  
6 imperfect self-defense and heat of passion." (Lodged Doc. A at  
7 19.)

8 State court claim two: The trial court violated Ms. Sanders's  
9 right to due process and to present a defense by excluding  
10 testimony regarding her history of victimization. (Lodged Doc. A  
11 at 31.)

12 State court claim three: Trial counsel was ineffective for failing  
13 to corroborate petitioner's testimony by presenting the testimony  
14 of Sylvia Roiland. She would have testified Alisha Brown admitted  
15 Mr. Santos threatened her (Alisha), and Ms. Sanders, with a knife  
16 the day before the homicide. (Lodged Doc. F at 3.)

17 State court claim four: Trial counsel was ineffective for failing  
18 to present expert testimony regarding Battered Woman's Syndrome,  
19 in violation of the Sixth and Fourteenth Amendments. (Lodged Doc.  
20 F at 4.)

21 State court claim five: Trial counsel was ineffective for failing  
22 to present testimony corroborating Ms. Sanders's reports of prior  
23 abuse, in violation of the Sixth and Fourteenth Amendments.  
24 (Lodged Doc. F at 4-A.)

25 State court claim six: Trial counsel's assistance fell below the  
26 Sixth and Fourteenth Amendments's protections because he failed  
27 to elicit Ms. Sanders's testimony about her PTSD symptoms and fear  
28

1 of Mr. Santos. (Lodged Doc. F at 4-B.)

2 **II. EXHAUSTION OF STATE REMEDIES**

3 As a preliminary issue, Petitioner must have exhausted her  
4 state remedies before seeking habeas review. The federal  
5 courts are not to grant a writ of habeas corpus brought by a  
6 person in state custody pursuant to a state court judgment  
7 unless 'the applicant has exhausted the remedies available in  
8 the courts of the State.' *Wooten v. Kirkland*, 540 F. 3d 1019,  
9 1023 (9<sup>th</sup> Cir. 2008), citing 28 U.S.C. §2254(b)(1)(A). "This  
10 exhaustion requirement is 'grounded in principles of comity' as  
11 it gives states 'the first opportunity to address and correct  
12 alleged violations of state prisoner's federal rights.'" *Id.*,  
13 citing *Coleman v. Thompson*, 501 U.S. 722, 731 (1991).

14 In order to exhaust state remedies, a petitioner must have  
15 raised the claim in state court as a federal claim, not merely as  
16 a state law equivalent of that claim. See *Duncan v. Henry*, 513  
17 U.S. 364, 365-66 (1995). The state's highest court must be  
18 alerted to and given the opportunity to correct specific alleged  
19 violations of its prisoners' federal rights. *Id.*, citing *Picard*  
20 *v. Connor*, 404 U.S. 270, 275 (1971). To properly exhaust a  
21 federal claim, the petitioner is required to have presented the  
22 claim to the state's highest court based on the same federal legal  
23 theory and the same factual basis as is subsequently asserted in  
24 federal court. *Hudson v. Rushen*, 686 F. 2d 826, 829-30 (9<sup>th</sup> Cir.  
25 1982), *cert. denied*, 461 U. S. 916 (1983).

26 Respondent may waive the exhaustion requirement. See 28  
27 U.S.C. § 2254 (b) (3) ("A state shall not be deemed to have waived

1 the exhaustion requirement or be estopped from reliance on the  
2 requirement unless the state, through counsel, expressly waives  
3 the requirement;" *Atwood v. Schiro*, 489 F. Supp. 982, 996 (2007).)  
4 In his answer to the petition, Respondent admits that "Petitioner  
5 has exhausted her state court remedies on claims 1, 2, 3, 4, and 5  
6 to the extent interpreted by Respondents herein." (Ct. Rec. 28 at  
7 3.) Thus, counsel expressly waived the exhaustion requirement  
8 with respect to claims one through five. Generally, a habeas court  
9 may, in its discretion reach the merits of a habeas claim or may  
10 insist on exhaustion of state remedies despite a State's waiver of  
11 the defense. See *Boyd v. Thompson*, 147 F. 3d 1124, 1127 (9<sup>th</sup> Cir.  
12 1998). The court's discretion should be exercised to further the  
13 interests of comity, federalism, and judicial efficiency. See *id.*  
14 It appears to advance the interests of the parties and judicial  
15 efficiency (without unduly offending the interests of either  
16 comity or federalism) for the Court to decide these claims on the  
17 merits, as more fully discussed herein.

18 Respondent's answer asserts Ms. Sanders's sixth federal  
19 claim, that trial counsel was ineffective in failing to elicit  
20 Petitioner's testimony about her PTSD symptoms and fear of the  
21 victim, Mr. Santos, is unexhausted because she failed to raise it  
22 in the state supreme court. (Ct. Rec. 28 at 3.) Citing *Rose v.*  
23 *Lundy*, 455 U.S. 509, 522 (1982), Respondent asked the court to  
24 dismiss the petition as mixed; i.e., presenting exhausted and  
25 unexhausted claims. (Ct. Rec. 28 at 3).

26 In her reply, Ms. Sanders notes an incomplete petition,  
27 omitting claim six, was filed as Lodged Document F. (Ct. Rec. 29

1 at 20.) On December 6, 2007, the parties stipulated and the court  
2 agreed that the previously Lodged Document F should be stricken  
3 and replaced with the complete copy provided. (Ct. Rec. 31.) The  
4 complete copy contains claim six. Ms. Sanders affirmatively avers  
5 that all of her federal habeas claims have been exhausted in the  
6 state's highest court. (Id.) Respondent has not further disputed  
7 her assertion.

8 Federal habeas claim one Ms. Sanders first claims  
9 "insufficient evidence of malice aforethought and premeditation,"  
10 together with "compelling evidence of imperfect self-defense and  
11 heat of passion," resulted in a conviction that violates due  
12 process. (Ct. Rec. 22 at 5.) Ms. Sanders raised the same claim  
13 based on the same facts, and invoking federal law, in the state's  
14 highest court that rendered a reasoned decision. (Lodged Doc. A at  
15 19.) Respondent is correct that Ms. Sanders exhausted her first  
16 federal habeas claim. See merits herein.

17 Federal habeas claim two When the trial court prevented Ms.  
18 Sanders from testifying about her "her history of victimization,"  
19 she claims the trial court violated her rights to due process and  
20 to present a defense. (Ct. Rec. 22 at 3.) Ms. Sanders raised the  
21 same claim based on the same facts, and cited federal law in  
22 support of the argument, to the state's highest court rendering a  
23 reasoned decision. (Lodged Doc. A at 31.) Respondent is correct  
24 that Ms. Sanders exhausted her second federal habeas claim. See  
25 merits herein.

26 Federal habeas claim three Ms. Sanders claims trial counsel  
27 was ineffective because he failed to present testimony that Mr.

1 Santos threatened Alisha Brown and Ms. Sanders with a knife the  
2 night before the homicide. (Ct. Rec. 22 at 6.) In the state's  
3 highest court issuing a reasoned decision, Ms. Sanders made the  
4 same argument based on the same facts and cited supporting federal  
5 law. (Lodged Doc. F at 4.) Respondent is correct that Ms. Sanders  
6 exhausted her third federal habeas claim.

7 Federal habeas claim four Ms. Sanders claims trial counsel's  
8 representation fell below Sixth Amendment standards because he  
9 failed to present expert testimony on Battered Woman's Syndrome.  
10 (Ct. Rec. 22 at 6.) In the state's highest court issuing a  
11 reasoned decision, Ms. Sanders made the same argument based on the  
12 same facts, and cited supporting federal law. (Lodged Doc. F at  
13 4.) Respondent is correct that Ms. Sanders exhausted her fourth  
14 federal habeas claim.

15 Federal habeas claim five Ms. Sanders claims trial counsel's  
16 failure to present testimony corroborating her past abuse violated  
17 her Sixth Amendments. (Ct. Rec. 22 at 7.) Ms. Sanders presented  
18 the same issue based on the same facts, and invoked federal law,  
19 in the state's highest court issuing a reasoned decision. Her  
20 fifth federal claim is exhausted.

21 Federal habeas claim six Ms. Sanders claims trial counsel's  
22 performance fell below Sixth and Fourteenth Amendment standards  
23 because he failed to elicit her testimony about her PTSD symptoms  
24 and fear of Mr. Santos. (Ct. Rec. 22 at 8.) In the state's  
25 highest court, as shown in the more complete Lodged Doc. F at 4-B,  
26 Ms. Sanders presented the same claim based on the same facts, and  
27 in reliance on federal law, to the state's highest court issuing a  
28

1 reasoned decision. Claim six has been exhausted in the state  
2 court.

3 In sum, Ms. Sanders has exhausted all six federal habeas  
4 claims.

### 5 **III. PROCEDURAL DEFAULT**

6 Having determined Petitioner has exhausted federal habeas  
7 claims one through six, the undersigned considers the  
8 applicability of the procedural default doctrine. When the  
9 doctrine applies, a petitioner's failure to comply with a state  
10 procedural rule may bar habeas relief if "adequate and independent  
11 state procedural grounds" are shown. See e.g., *Coleman v.*  
12 *Thompson*, 501 U.S. 722, 729-30 (1991). Procedural default does  
13 not bar considering a federal habeas claim unless the last state  
14 court rendering a judgment clearly and expressly states that its  
15 judgment rests on a state procedural bar. *Harris v. Reed*, 489 U.S.  
16 255, 263 (1989). The first requirement is a petitioner's actual  
17 violation of a state procedural rule. See e.g., *Cassette v.*  
18 *Stewart*, 406 F.3d 614, 621-622 (9<sup>th</sup> Cir. 2005).

19 The Third Appellate District denied the first claim  
20 (insufficient evidence of malice aforethought and premeditation)  
21 after reviewing the entire record. The court considered evidence  
22 of malice and premeditation as well as of imperfect self-defense  
23 in reaching its determination. (Lodged Doc. D, Appendix at 12-  
24 16.) Clearly the court reached the issue on the merits, rather  
25 than relying on an independent and adequate state procedural rule or  
26 state procedural bar.

27 Alternatively, the claim can be viewed as barred by

1 procedural default because a claim of insufficiency of the  
2 evidence can only be considered on direct appeal, not in a habeas  
3 proceeding. *In re Lindley*, 177 P.2d 918, 926-927 (Cal. 1947). The  
4 state rule is both adequate and independent. *Carter v. Giurbino*,  
5 385 F.3d 1194, 1197-1198 (9<sup>th</sup> Cir. 2004). Nonetheless, the court  
6 briefly addresses the claim on the merits.

7 Petitioner's second habeas claim, that the trial court's  
8 exclusion of her testimony about prior sexual and physical abuse  
9 violated her rights to due process and to present a defense, was  
10 also considered by the appellate court and rejected as harmless  
11 error because Petitioner failed to show prejudice. (Lodged Doc.  
12 D, appendix at 16-18.) Procedural default is inapplicable to Ms.  
13 Sanders's second federal claim because the state court did not  
14 decide petitioner violated a state procedural rule when she  
15 presented it.

16 The San Joaquin County Superior Court considered and  
17 discussed federal claims 3-6. (Lodged Doc. F at Attached Order.)  
18 The court reviewed the record and found Ms. Sanders had not  
19 established prejudice as a result of trial counsel's  
20 representation. (Lodged Doc. F, attached order at 2.) Procedural  
21 default is inapplicable to claims 3-6 because the state court did  
22 not deny them based on any violation of a state procedural rule.

23 Because the Third Appellate District and superior courts  
24 decided the issues on the merits, procedural default is not  
25 applicable.

26 ///

27 **IV. MERITS**

28 ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS



1 **A. Standard of Review**

2 Under the Anti-Terrorism and Effective Death Penalty Act  
3 (AEDPA), applicable here, a federal court may grant habeas relief  
4 if a state court adjudication resulted in a decision that was  
5 contrary to, or involved an unreasonable application of clearly  
6 established federal law, as determined by the Supreme Court of the  
7 United States, or resulted in a decision that was based upon an  
8 unreasonable determination of the facts in light of the evidence.  
9 28 U.S.C. § 2254 (d). "AEDPA does not require a federal habeas  
10 court to adopt any one methodology in deciding the only question  
11 that matters under § 2254(d)(1) - whether a state court decision  
12 is contrary to, or involved an unreasonable application of,  
13 clearly established federal law." *Lockyer v. Andrade*, 538 U.S.  
14 63, 71 (2003), referring to *Weeks v. Angelone*, 528 U.S. 225 at 237  
15 (2000). Where no decision of the Supreme Court "squarely  
16 addresses" an issue or provides a "categorical answer" to the  
17 question before the state court, § 2254(d)(1) bars relief. *Moses*  
18 *v. Payne*, 543 F.3d 1090, 1098 (9<sup>th</sup> Cir. 2008), relying on *Wright v.*  
19 *Van Patten*, 552 U.S. 120, 128 S. Ct. 743, 746 (2008); *Carey v.*  
20 *Musladin*, 549 U.S. 70 (2006).

21 Federal courts apply the *Brecht* standard to determine whether  
22 a constitutional error was harmless. *Fry v. Pliler*, 551 U.S. 112  
23 (2007); *Brecht v. Abrahamson*, 507 U.S. 619, 638 (1993). Habeas  
24 relief is warranted only if the error had a "substantial and  
25 injurious effect or influence in determining the jury's verdict."  
26 *Brecht*, 507 U.S. at 637 ((citing *Kotteakos v. United States*, 328  
27 U.S. 750, 776 (1946)); *Bains v. Cambra*, 204 F.3d 964, 977-78 (9<sup>th</sup>

1 Cir. 2000) *cert. denied*, 531 U.S. 1037 (2000)). That is, the  
2 Petitioner is entitled to habeas relief only if he can show that  
3 any constitutional violation "resulted in actual prejudice."  
4 *Brecht*, 507 U.S. at 638 (internal citation omitted).

5 **B. Federal claim one: insufficiency of evidence**

6 Petitioner alleges she was denied a fair trial because the  
7 evidence of malice aforethought and premeditation are not  
8 sufficient to support her conviction. (Ct. Rec. 22 at 5.) The  
9 highest state court ruling on the issue, the San Joaquin County  
10 Superior Court, held:

11 Defendant contends her first degree murder  
12 conviction must be reversed because the prosecution  
13 presented insufficient evidence of malice aforethought  
14 and premeditation. She further contends the evidence  
15 compelled a finding that she acted in the heat of passion  
16 or with the honest, though unreasonable, belief in the  
17 need for self-defense or defense of others.

18 We review a claim of insufficient evidence by  
19 evaluating the entire record in the light most favorable  
20 to the judgment to determine whether it discloses evidence  
21 that is reasonable, credible, and of solid value from  
22 which a rational trier of fact could have found the  
23 essential elements beyond a reasonable doubt. (*People v.*  
24 *Price* (1991) 1 Cal.4th 324, 462, superseded by statute on  
25 other grounds as stated in *People v. Hinks* (1997) 58  
26 Cal.App.4th 1157, 1161-1165.) We cannot reverse a  
27 conviction on the ground of insufficient evidence unless  
28 it clearly appears "that upon no hypothesis whatever is  
there sufficient substantial evidence to support it."  
(*People v. Redmond* (1960) 71 Cal.2d 745, 755.)

Substantial evidence is evidence that a reasonable  
jury could find persuasive. (*People v. Barton* (1995) 12  
Cal.4th 186, 201, fn. 8.) On appeal, the test is not  
whether the evidence proves guilt beyond a reasonable  
doubt (*People v. Mincey* (1992) 2 Cal.4th 408, 432), or  
whether the evidence would "support some other finding"  
(*People v. Cartier* (1960) 54 Cal.2d 300, 306). The question,  
instead, is whether "'any rational trier of fact could have  
found the essential elements of the allegation beyond a  
reasonable doubt.'" (*People v. Rowland* (1992) 4 Cal.4th 238,  
271.)

1 Murder is the unlawful killing of a human being with  
2 malice aforethought. (Pen. Code, § 187, subd. (a).) All  
3 murder perpetrated by any kind of willful, deliberate, and  
4 premeditated killing is murder of the first degree. (§ 189.)  
5 Malice may be either express or implied. It is express when  
6 the defendant manifests "a deliberate intention unlawfully to  
7 take away the life of a fellow creature." (§ 188.) It is  
8 implied when "no considerable provocation appears, or when  
9 the circumstances attending the killing show an abandoned and  
10 malignant heart." (*Ibid.*)

11 An intentional and unlawful killing lacks malice and  
12 is the lesser included offense of voluntary manslaughter  
13 if it is committed in a "sudden quarrel or heat of  
14 passion" or in imperfect self-defense. (§ 192, subd. (a);  
15 *People v. Rios* (2000) 23 Cal.4th 450, 460-461.) Imperfect  
16 self-defense requires a showing that the intentional killing  
17 was the result of an honest but unreasonable belief in the  
18 need to defend oneself from imminent peril to life or great  
19 bodily injury. (*People v. Flannel* (1979) 25 Cal.3d 668, 674-  
20 675, superseded by statute on other grounds as stated in *In*  
21 *re Christian S.* (1994) 7 Cal.4th 768, 776.)

22 This record contains substantial evidence supporting  
23 the jury's conclusion that defendant did not, in fact, act  
24 in the heat of passion or under an actual, though  
25 unreasonable, belief in the need to defend herself or others  
26 from imminent peril to life or great bodily injury, but  
27 instead acted with a deliberation and premeditation born of  
28 malice.

According to Brown, on the morning of the stabbing,  
defendant looked accusingly at Santos after discovering  
that her car had been broken into. In the evening, after  
all three had been drinking, Brown heard defendant say she  
"was going to have somebody come and kick [Santos's] ass."  
After Brown sat on Santos, defendant retrieved a knife  
from the kitchen drawer and held it in her hand although  
Brown had told her simply to hide the kitchen knife.

After Brown got off of Santos, defendant was upset  
because she perceived Brown and defendant had made up.  
Defendant went in the kitchen and started sharpening two  
knives, the second which she retrieved from her bag that  
was between the couch and table. She approached Santos in  
the living room, put the kitchen knife to her crotch, and  
asked him, "You want me to fuck you with this? I know your  
kind."

Defendant walked back into the kitchen and kept  
sharpening the knives and "taunt[ed]" him saying twice,  
"I got dead aim." She also told Santos, "I know you want  
me, I seen the way you look at . . . me when you come out  
[of] the room." Santos threw a beer can at the wall and

1           said, "Shut up. Just shut up, bitch."

2           Grinning, defendant walked through the living room. She  
3 missed stabbing Santos the first three or four times because  
4 Brown knocked Santos into the desk. Defendant stepped closer  
5 to Santos and stabbed him. This fatal stab wound was to  
6 Santos's upper right chest and was nine and one-half inches  
7 deep. Defendant stabbed Santos with such force that her fist  
8 bruised Santos's body. These actions could certainly be  
9 viewed to reflect planning and deliberation.

10           While defendant testified Santos swung at her  
11 immediately before she stabbed him and that she felt  
12 threatened by Santos and thought he was going to do something  
13 to her or Brown, the jury apparently gave little, if any,  
14 weight to that evidence. Because it is not our task to  
15 supplant reasonable theories accepted by the trier of fact  
16 with alternative theories, we reject defendant's challenge to  
17 the sufficiency of the evidence on appeal.

18 (Lodged Doc. D, Attached Appendix at 12-15.)

19           The undersigned agrees with the state court's analysis.  
20 The record contains substantial evidence supporting the jury's  
21 conclusion that Ms. Sanders did not act in the heat of  
22 passion or due to an actual but unreasonable belief in the need to  
23 defend "herself or others from imminent peril to life or great  
24 bodily injury, but instead acted with a deliberation and  
25 premeditation born of malice." (Lodged Doc. D, Attached Appendix  
26 at 14.) The evidence shows deliberation, planning, and malice:  
27 Ms. Sanchez sharpened two knives; repeatedly attempted to stab Mr.  
28 Santos before succeeding; Mr. Santos was, as Respondent points  
out, intoxicated and unarmed at the time; the fatal wound was a  
little more than nine inches long, and, inflicted with such force,  
that Ms. Sanders left a bruise with her fist when she stabbed him.  
The jury's verdict with respect to premeditation and the lack of  
imperfect self-defense is supported by substantial evidence.

          Ms. Sanders fails to show the state court's decision

1 is contrary to or involved an unreasonable application of  
2 federal law, as required of a habeas petitioner. Claim one  
3 is denied as without merit.

4 **C. Federal claim two: excluding petitioner's testimony about**  
5 **past abuse**

6 Petitioner alleges the trial court deprived her of the right  
7 to present a defense by excluding her testimony about her past  
8 sexual and physical abuse. The superior court found:

9 *The Trial Court Did Not Prejudicially Err in Excluding*  
10 *Defendant's Testimony of Her History of Being Sexually*  
*and Physically Abused*

11 After defendant testified, and out of the presence of  
12 the jury, counsel stated he had "wanted to ask [defendant]  
13 questions about prior acts of violence against her . . .,"  
believing this was relevant to explain why defendant did not  
leave the apartment or call 911.

14 The court denied counsel's request, explaining: "First  
15 of all, the battered woman's syndrome, like I said in limine,  
16 why someone leaves and doesn't leave, the courts have held  
17 are between the two parties, the batterer and the victim,  
18 which is not a situation we had here. I also felt that  
whatever acts of violence [defendant] has sustained in her  
youth go to the issue of post-traumatic stress syndrome,  
which may go to her heightened sense of fear. And the expert  
would certainly be allowed to argue that, or to testify to  
that, and you would be allowed to argue that."

19 The court later ruled that Dr. Kaser-Boyd could testify  
20 about her diagnosis of the defendant, the basis for the  
21 diagnosis, and the "stressors" that may retrigger the  
symptoms.

22 On appeal, defendant contends the trial court violated  
23 her federal constitutional rights to due process and to  
24 present a defense when it ruled she could not testify  
25 regarding "her history of victimization." She argues this  
evidence was relevant and critical to the jury's  
determination of her mental state.

26 We need not decide whether the court erred in  
27 prohibiting counsel from questioning defendant about her  
28 history of being sexually and physically abused because  
the alleged error is harmless under any prejudice-based  
standard or reversible error. (*Chapman v. California* (1967))

1 386 U.S. 18, 22-23 [harmless beyond a reasonable doubt  
2 standard]; *People v. Watson* (1956) 46 Cal.2d 818, 836  
3 [reasonable probability of a different result].)

4 Dr. Kaser-Boyd testified about several instances of  
5 physical and sexual abuse that defendant allegedly had  
6 suffered. These included her father shooting at her; her  
7 stepbrother sexually abusing her; two men kidnapping,  
8 beating, and raping her and a friend; and the father of her  
9 children raping her and acting violently toward her and her  
10 children.

11 Defendant acknowledges this evidence but argues that Dr.  
12 Kaser-Boyd's testimony could not "cure the harm from  
13 exclusion of [her] testimony on the same subject" because the  
14 prosecutor suggested during his cross-examination of Kaser-  
15 Boyd that defendant was lying and stating during rebuttal  
16 closing argument that no psychologist or psychiatrist is a  
17 lie detector.

18 Defendant overlooks the fact that the jury had  
19 significant opportunities to evaluate defendant's credibility  
20 and mental state when she testified at trial on her own  
21 behalf and when the videotaped interview between police and  
22 defendant was played. Thus, the trial court's denial of  
23 defense counsel's request to question defendant about her  
24 history of being abused did not prevent the jury from  
25 assessing her credibility and mental state.

26 (Lodged Doc. D, attached appendix at 16-18.)

27 The undersigned agrees with the superior court  
28 that if the trial court erred by excluding this evidence, it is  
harmless under any prejudice-based standard. The jury heard  
relevant evidence of Ms. Sanders's mental state: they heard her  
testify, saw a videotape of her interview with police, and heard  
expert testimony from Dr. Kaser-Boyd about the symptoms, fears and  
reactions of people suffering from PTSD. Even if the court  
admitted the additional evidence, it is extremely unlikely the  
jury would have reached a different result. For habeas purposes,  
petitioner fails to show the state court's decision is contrary to  
or involved an unreasonable application of clearly established  
federal law. Petitioner's second claim is denied because it is

1 without merit.

2 **D. Federal claim three: counsel was ineffective because he**  
3 **failed to present the testimony of another daughter, Ms. Roiland,**  
4 **to corroborate Mr. Santos's prior threat**

5 Petitioner alleges counsel's failure to present the testimony  
6 of Sylvia Roiland, sister of Alisha Brown, was deficient. She  
7 alleges Ms. Roiland would corroborate her (Ms. Sanders's) version  
8 of events, that Mr. Santos threatened Petitioner and Alisha Brown  
9 with a knife the night before the homicide. (Ct. Rec. 22 at 6.)  
10 Ms. Sanders testified Santos threatened her and Ms. Brown with a  
11 knife the night before the homicide, but Ms. Brown testified that  
12 he did not. (Id.) Petitioner alleges Ms. Roiland, "could have  
13 testified that [Alisha] Brown admitted to her that Santos had  
14 threatened her and petitioner with a knife." (Id.) Ms. Sanders  
15 alleges counsel knew about the admission but failed to present Ms.  
16 Roiland's testimony because "he just forgot in the heat of trial."  
17 (Id.)

18 The superior court addressed the issue:

19 Upon review, Petitioner has submitted supporting  
20 declarations from Ms. Sylvia Roiland, Ms. Lisa Brown and Dr.  
21 Kaser-Boyd outlining what their testimony and/or opinions  
22 would be. Also, there is a declaration from trial counsel,  
23 Mr. Richard Schaffer wherein he admits to having not  
24 considered certain testimony based on inadvertence and/or  
25 futility of offering the evidence based on earlier  
26 evidentiary rulings. He notes his surprise at the verdict and  
27 without admitting any error, offers to do whatever he can to  
28 rectify the situation.

24 . . .

25 As to the substantive claims, the record in the case  
26 reflects sufficient evidence that Petitioner did not act in  
27 the heat of passion or under the belief in the need to  
28 protect against imminent peril from Santos (i.e., he had been  
subdued by Alisha, Petitioner retained two knives and Santos

1 was not armed, Petitioner taunted Santos and had taken  
2 several swings and missed and then stepped closer and stabbed  
3 again). Further, the jury was presented with and listened to  
4 both the 911 call and the videotaped interview of Petitioner  
5 and the police after the incident, along with Petitioner's  
6 own testimony where she admitted that Santos was just mean to  
7 her, called her names, had not wanted her to live there,  
8 teased Brown "like hell" and was "just an asshole."

9 In light of this evidentiary record, the court finds  
10 the evidence offered to establish that counsel's  
11 assistance was ineffective, fails to show it would have been  
12 of assistance in the defense or that within a reasonable  
13 probability, the outcome would have been different. Absent  
14 such a showing, Petitioner has failed to establish trial  
15 counsel's alleged conduct was deficient and as such,  
16 prejudiced her and the outcome of the proceeding. (*Strickland*  
17 *v. Washington* (1984) 466 U.S. 668; *People v. Weaver* (2001) 26  
18 Cal.4th 876.)

19 In that regard, Petitioner has therefore failed to set  
20 forth a prima facie case for habeas relief and summary denial  
21 is appropriate. (*In Re Bower* (1985) 38 Cal.3d 865; and *People*  
22 *v. Jackson* (1980) 28 Cal.3d 264.) Based on the foregoing, the  
23 petition is denied on this issue.

24 (Lodged Doc. F, attached opinion at p. 2.)

25 On habeas review of claimed ineffective assistance, this  
26 court must first determine whether the trial court considered "the  
27 underlying merits of the case to come to a tentative conclusion as  
28 to whether [a] claim, if properly presented, would be viable,"  
notwithstanding the alleged ineffective assistance of counsel. See  
*Jie Lin v. Ashcroft*, 377 F.3d 1014, 1027 (9<sup>th</sup> Cir. 2004.) With  
respect to claim three, the state court determined that Ms.  
Sanders was not prejudiced by the alleged deficiency of failing to  
present Ms. Roiland's testimony. Accordingly, the state court  
found the claim not viable.

*Strickland's* two-pronged test requires a showing of  
deficient performance and prejudice to the defendant. *Strickland*  
*v. Washington*, 466 U.S. 668, 688-689 (1984). To satisfy the first



1 prong, a petitioner must show that, considering all the  
2 circumstances, counsel's performance fell below an objective  
3 standard of reasonableness. (*Id.*, at 688.) This requires  
4 identifying the acts or omissions that are alleged to not have the  
5 result of reasonable professional judgment. (*Id.*, at 690.) The  
6 federal court then determines whether, in light of all the  
7 circumstances, the acts or omissions were outside the wide range  
8 of professional competent assistance. (*Id.*) In making this  
9 determination, there is a strong presumption "that counsel's  
10 conduct was within the wide range of reasonable assistance, and  
11 that he exercised acceptable professional judgment in all  
12 significant decisions made." *Hughes v. Borg*, 898 F.2d 695 (9<sup>th</sup> Cir.  
13 1999), citing *Strickland*, 466 U.S. at 689.

14 Second, a petitioner must prove prejudice. See *Strickland*,  
15 466 U.S. at 693. Prejudice is established when "there is a  
16 reasonable probability that, but for counsel's unprofessional  
17 errors, the result of the proceeding would have been different."  
18 (*Id.* at 694.) A reviewing court "need not determine whether  
19 counsel's performance was deficient before examining the prejudice  
20 suffered by the defendant as a result of the alleged deficiencies.  
21 . . . If it is easier to dispose of an ineffectiveness claim on the  
22 ground of lack of sufficient prejudice. . . that course should be  
23 followed." *Pizutto v. Arave*, 280 F.3d 949, 955 (9<sup>th</sup> Cir. 2002),  
24 quoting *Strickland*, 466 U.S. at 697.

25 The undersigned agrees with the state court's analysis.  
26 Error, even if error is assumed, that is unlikely to have changed  
27 the outcome of the case fails to establish prejudice necessary to  
28

1 demonstrate ineffective assistance. *Strickland*, 466 U.S. at 694.  
2 Moreover, Ms. Sanders fails to meet her habeas burden of showing  
3 that the state court's decision is contrary to, or involved an  
4 unreasonable application of, clearly established federal law, or  
5 resulted in a decision that was based on an unreasonable  
6 determination of the facts in light of the evidence. See e.g.,  
7 *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003). Accordingly, the  
8 third federal claim is denied as without merit.

9 **E. Federal claim four: failing to present expert testimony on**  
10 **Battered Woman Syndrome was deficient**

11 Petitioner alleges counsel was deficient because he failed to  
12 present expert testimony on Battered Woman's Syndrome. (Ct. Rec.  
13 22 at 6.)

14 Ms. Sanders fails to show prejudice resulting from counsel's  
15 failure to present evidence that Ms. Sanders suffered from  
16 Battered Woman's Syndrome. Had trial counsel presented such  
17 evidence, it is extremely unlikely in light of the other evidence  
18 that the result would have been different. The reviewing court  
19 accurately points out that the jury heard expert testimony about  
20 PTSD, saw Ms. Sanders testify, and watched the videotape of her  
21 interview with police. After reviewing the record, the state  
22 court correctly concluded this evidence gave the jury ample  
23 opportunity to consider Ms. Sanders's credibility and assess her  
24 mental state. As the state court further correctly observed,  
25 battered woman syndrome applies between the partners in a batterer  
26 and victim relationship, a relationship not present here between  
27 Ms. Sanders and her daughter's partner, Mr. Santos. And, for

1 purposes of habeas review, Ms. Sanders's claim fails because she  
2 does not establish that the state court's decision was contrary  
3 to, or involved an unreasonable application of, clearly  
4 established federal law. *Lockyer v. Andrade*, 538 U.S. 63, 71  
5 (2003) (citation omitted). Accordingly, federal claim four is  
6 denied as without merit.

7 **F. Federal claim five: counsel was deficient because he failed to**  
8 **present witnesses Lesa Brown and Sylvia Roiland to corroborate Ms.**  
9 **Sanders's past abuse**

10 Petitioner alleges trial counsel was deficient because he  
11 failed to present the testimony of Ms. Roiland and Ms. Brown to  
12 corroborate Petitioner's past abuse. (Ct. Rec. 22 at 7.)

13 This claim similarly fails because Petitioner fails to  
14 establish prejudice as required by *Strickland*. As noted, the jury  
15 learned of Ms. Sanders's past abuse through the testimony of Dr.  
16 Kaser-Boyd and heard Petitioner testify on her own behalf. She  
17 fails to establish prejudice resulting from counsel's  
18 representation.

19 With respect to habeas review, petitioner fails to show the  
20 state court's decision was contrary to, or involved an  
21 unreasonable application of, clearly established federal law, or  
22 resulted in a decision that was based upon an unreasonable  
23 determination of the facts in light of the evidence. See e.g.,  
24 *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003). Ms. Sanders cites  
25 no decision by the U.S. Supreme Court contrary to the state  
26 court's decision which could provide a basis for federal habeas  
27 relief. Petitioner's fifth claim is denied.

1 **G. Federal claim six: counsel was deficient because he**  
2 **failed to present Ms. Sanders's testimony about her PTSD symptoms**  
3 **and fear of the victim**

4 Petitioner claims trial counsel's failure to elicit testimony  
5 from her about her PTSD symptoms and fear of Mr. Santos was  
6 deficient. (Ct. Rec. 22 at 8.)

7 Counsel's failure to present evidence of PTSD (in addition to  
8 the testimony of Dr. Kaser-Boyd) and of Ms. Sanders's fear of Mr.  
9 Santos, is not deficient because, as the state court found, Ms.  
10 Sanders does not establish that the decision prejudiced her. At  
11 trial Ms. Sanders testified Mr. Santos had threatened her and her  
12 daughter Alisha the night before the homicide - evidence refuted  
13 by Alisha and apparently rejected by the jury. The state courts  
14 observed the physical evidence and some of Ms. Sanders's own  
15 statements strongly corroborated Ms. Brown's, rather than Ms.  
16 Sanders's later, version of events. Since there was strong  
17 additional evidence supporting Ms. Brown's and contradicting  
18 Petitioner's version of events, Petitioner does not show that her  
19 testimony with respect to PTSD or fear of Mr. Santos was  
20 reasonably likely to have changed the outcome of the case, nor  
21 that counsel's trial choices prejudiced her.

22 The undersigned agrees with the state court's analysis.  
23 Error (even if error is assumed) that is unlikely to have changed  
24 the outcome of the case fails to establish prejudice necessary to  
25 demonstrate ineffective assistance. *Strickland*, 466 U.S. at 694.  
26 Moreover, Ms. Sanders fails to meet her habeas burden of showing  
27 that the state court's decision is contrary to, or involved an  
28 unreasonable application of, clearly established federal law, or

1 resulted in a decision that was based upon an unreasonable  
2 determination of the facts in light of the evidence. See e.g.,  
3 *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003). Ms. Sanders cites  
4 no decision by the United States Supreme Court contrary to the  
5 state court's decision which could provide a basis for federal  
6 habeas relief. Accordingly, Ms. Sanders's sixth federal claim  
7 should be denied.

8 **V. CONCLUSION**

9 For the reasons stated above, the Petition for Writ of Habeas  
10 Corpus (Ct. Rec. 1) is **DENIED**.

11 The District Court Executive **SHALL FILE** this order, serve  
12 copies of it on the parties, and **CLOSE** the file.

13 **DATED** this 28th day of July, 2009.

14  
15 s/James P. Hutton

16 JAMES P. HUTTON  
17 UNITED STATES MAGISTRATE JUDGE  
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