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

|                            |   |                        |
|----------------------------|---|------------------------|
| WALTER JACKSON             | ) |                        |
|                            | ) |                        |
| Petitioner,                | ) | No. C 10-4014 CRB (PR) |
|                            | ) |                        |
| vs.                        | ) | ORDER DENYING          |
|                            | ) | PETITION FOR A WRIT OF |
| GREG LEWIS, Acting Warden, | ) | HABEAS CORPUS          |
|                            | ) |                        |
| Respondent.                | ) |                        |
| _____                      | ) |                        |

Petitioner, a state prisoner at California State Prison, Solano, in Vacaville, California, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction and sentence from Contra Costa County Superior Court. For the reasons set forth below, a writ of habeas corpus will be denied.

**STATEMENT OF THE CASE**

Petitioner was convicted by a jury of first degree murder. On November 21, 2007, he was sentenced to an indeterminate term of 25 years to life, to be served consecutively with a previously imposed five-year term for arson arising out of the same incident.

On May 25, 2009, the California Court of Appeal affirmed the conviction and denied petitioner's request for state habeas relief.

On August 12, 2009, the Supreme Court of California denied review and, on June 23, 2010, denied petitioner's final application for state habeas relief.

1 On September 7, 2010, petitioner filed the instant petition for a writ of  
2 habeas corpus under § 2254. Per order filed on February 14, 2011, the court  
3 found the claims cognizable, when liberally construed, and ordered respondent to  
4 show cause why a writ of habeas corpus should not be granted. After several  
5 extensions of time, respondent has filed an answer to the order to show cause and  
6 petitioner has filed a traverse.

### 7 STATEMENT OF THE FACTS

8 The California Court of Appeal summarized the facts of the case as  
9 follows:

10 The body of the victim in this case, 82-year-old Cora  
11 Morgan, was found by firefighters who had come to her apartment  
on December 29, 2004, to put out a fire.

12 On December 30, 2004, an autopsy was performed on the  
13 victim. She was dressed in a nightgown and a sweatshirt and had  
burn injuries on the outside of her body and blood in the mouth and  
14 nose area.

15 The victim did not, however, die of smoke inhalation. She  
was asphyxiated before the fire ever occurred. Her "upper airway  
16 was obstructed by . . . wadded material at the back of her throat . . .  
17 ." In addition, she had injuries to her neck and throat that were  
"consistent with manual strangulation." Either of these could have  
18 killed her. There were also injuries to the front of her lips which  
indicated that "she could have had a hand held over her mouth as  
well."

19 The victim sustained other injuries before she died. She was  
20 bruised on the front left shoulder, which was evident from an  
internal examination. The victim also "had an area of bleeding  
21 under the scalp at the back of the head." There were also "tears to  
the mucus membrane lining the mouth . . . and a small amount of  
22 bleeding" which could have been the result of the "lips being  
pushed against the teeth, a blow to the mouth . . . being struck in  
23 the mouth or perhaps a combination of the two." The victim also  
had a "slight fracture between the fourth and fifth spinal segments  
24 fo her neck" which was not related to the asphyxiation but, rather,  
"is something that you could see from a number of circumstances,  
25 the individual perhaps taking a fall and causing a crack to occur  
there."

26 The fire in the two story apartment was the result of three  
27 separate fires, each set intentionally – two in upstairs bedrooms by  
28

1 burning candles and one downstairs in the kitchen. The victim's  
2 body was found downstairs, in the kitchen, where the worst of the  
fire damage occurred.

3 When they found the body, firefighters notified Walnut  
4 Creek police officer Carol Burroughs, who was on the scene to  
5 provide traffic control for the firefighters. Burroughs learned that  
6 earlier that evening a man had inquired about the person inside the  
7 apartment. This man, accompanied by a woman, approached  
8 Burroughs shortly after she learned of the victim's death.  
Burroughs identified the man as defendant. The woman with  
9 defendant was the victim's daughter and defendant's wife, Pam  
10 Jackson. Burroughs told Pam Jackson that her mother had died in  
11 the fire. Pam Jackson was very upset and fell to the ground.  
Defendant comforted her.

12 It was raining and Burroughs offered to let defendant and  
13 Pam Jackson sit in her car. As Burroughs was accompanying  
14 defendant and Pam Jackson to her car, defendant "made a comment  
15 . . . that the victim was always angry at him and evidently was  
16 kicking him out of the apartment."

17 Randy Dickey, a police officer for the City of Walnut Creek  
18 was assigned to lead the investigation into the victim's death.  
19 Dickey interviewed defendant at the police station at around  
20 midnight the night of the victim's death. Another officer spoke  
21 with Pamela Jackson. Although they were indoors, defendant kept  
22 his parka on, zipped up to the neck. He also kept his hat on.  
23 Defendant told Dickey he wasn't at the house when the fire started.  
24 He claimed not to know how the fire started. He described the  
25 victim, who was his mother-in-law, as a very healthy woman.  
26 Defendant said he had a strained relationship with the victim, that  
27 he tried to please her, but she was not very flexible to his needs.  
28 The victim had just told him that he needed to move out of the  
apartment.

Defendant told Dickey he suspected the victim's death had  
not been an accident. "[H]e said that he had received this  
mysterious letter from someone in his past that said that 'You'll be  
blamed' and 'Remember Beasley.'" During this interview, defendant  
never took his jacket off although Dickey asked him several times  
if he would do so. At one point, Dickey asked defendant if he  
could photograph defendant. Defendant allowed Dickey to take  
one photograph, but would not unzip his jacket or take it off.

Defendant and Pamela Jackson were taken to a hotel at  
around 3:00 or 4:00 that morning. Dickey learned later that  
morning that the victim's death was a homicide. Dickey  
reinterviewed defendant. The interview was videotaped. Dickey  
told defendant that the victim had been murdered. He did not give  
defendant any other details about the murder. He also told  
defendant that the fire in the apartment was arson.

1 Defendant repeated his original statement about what he had  
2 been doing the day of the victim's death. Defendant then indicated  
3 he wanted to speak to Pamela Jackson. Dickey thought Jackson  
4 "knew what the truth was, and she wanted to convince [defendant]  
5 to tell us the truth about what had happened to [the victim]."

6 Jackson asked Dickey to remain in the room during her  
7 conversation with defendant. Jackson asked defendant to "tell her  
8 the truth." Defendant leaned forward and whispered in her ear.  
9 Jackson "started to cry and said that she could have peace now and  
10 thanked him for telling her what happened. Dickey heard  
11 defendant say "She kept coming at me. She kept coming at me."  
12 Defendant also gestured with his arm "like he was trying to get  
13 somebody away or strike somebody with an elbow." At some  
14 point, defendant also mentioned something about a knife and that  
15 "she just wouldn't let . . . him go."

16 Dickey did not hear all of the conversation between Jackson  
17 and defendant because defendant was whispering to his wife.  
18 Defendant told his wife not to tell anyone what he had said.

19 Dickey observed defendant's arms during this interview. He  
20 noticed "some semicircular gouges" on his "inner elbow, inner arm  
21 area" on both arms. "There appeared to be fingernail gouges from  
22 somebody grabbing an arm." Defendant explained these injuries by  
23 saying that he had climbed over a fence to try to get into the  
24 apartment.

25 Dickey asked defendant how the victim had died and  
26 defendant told him "[s]he was strangled." When Dickey asked him  
27 where defendant strangled the victim, defendant "backs away and  
28 said he wasn't involved and he didn't do anything . . . and ultimately  
that he didn't want to talk to us anymore about it." Defendant was  
arrested and transported to jail.

A Sergeant Edwards interviewed defendant again after his  
arrest, while Dickey monitored the interview from the room next  
door. The interview was videotaped. During this interview,  
defendant admitted involvement in the victim's death. Defendant  
told Edwards the victim "had approached him at the top fo the  
stairs, and that he had made a motion back which knocked her  
down the stairs." "[H]e dragged her on a rug into the kitchen, and  
then strangled her and forced a wad of dinner napkins, holiday  
napkins, down her throat." He also said the victim wasn't dead so  
he "cut off a cord from an electrical toaster that was there in the  
kitchen and used the toaster to tie around her neck. And he did this  
at least two – I think three times, and each time when he released  
the cord, he saw some blood bubbles come out of her nose. And he  
thought that she was still alive, so he reapplied the electrical cord to  
finish the job, and then ultimately the napkins." The cord was  
never found. Defendant explained that the victim was still alive  
after the fall down the stairs, and that he strangled her because he

1 felt he would be blamed for the fall and "he did not want to go back  
2 to prison." Defendant set the fire because "he wanted to cover it up  
3 so it made it look like he wasn't there."

3 Defendant was returned to jail. That night, he spoke to  
4 Walnut Creek Police Officer Vevera. Vevera, who had listened to  
5 the conversation between defendant and his wife, told defendant  
6 he'd heard him admit that he had elbowed the victim, "that she  
7 started bleeding and that he panicked." Defendant said, "Oh you  
8 must really have heard that then."

7 Walnut Creek Police Sergeant Edwards spoke to defendant  
8 shortly after defendant had been informed of the victim's death.  
9 Defendant asked Edwards if he suspected "foul play" and told him  
10 that he (defendant) had beat somebody up several years earlier and  
11 had received, three months before the victim's death, a threatening  
12 letter to the effect that defendant was "going to be blamed for this."  
13 Defendant also referred to the victim as a "bitch and a nasty  
14 woman." Edwards asked defendant if he suspected anyone of  
15 killing the victim, and defendant said he should check into his  
16 wife's "associates." At some point during the investigation,  
17 Edwards confirmed that Pamela Jackson was working at the time  
18 the fire occurred.

13 Defendant was interviewed a third time. This interview was  
14 conducted by Edwards and took place on January 3, 2005.  
15 Defendant admitted to Edwards that he was "the sole responsible"  
16 for the victim's death. This interview was videotaped and, in the  
17 interview, defendant contradicted a statement he'd made earlier to  
18 the effect that the victim had pulled a knife on him. Defendant told  
19 Edwards that the victim had fallen down the stairs. She wasn't  
20 badly injured. Defendant said he "panicked" because "he was  
21 afraid he was going to go to jail for the rest of his life." He thought  
22 about calling 911 after the victim fell down the stairs, but instead  
23 "dragged her away from the door."

19 The jury was shown a videotape of excerpts from the  
20 January 3, 2005, interview. In these excerpts, defendant admitted  
21 that he dragged the victim into the kitchen after she fell down the  
22 stairs. He strangled her with a cord. Not sure if the victim was  
23 dead, defendant put napkins in defendant's [sic] mouth. He put  
24 blankets around her and then tried to put them in the stove so her  
25 body would burn.

23 At trial, defendant admitted to setting the fire, but testified  
24 that he had lied in his earlier confessions to killing the victim. He  
25 stated that his mother-in-law did not "have not one mark . . . bruise  
26 on her neck, period, that was made from a human being while she  
27 was alive." Defendant testified that "I hit her [the victim's] arms  
28 and throw her over a little bit. . . . [¶] We were at the top of the  
stairs. She swung. Something happened that caused her to go back  
against the wall and do – kind of grab her chest and she went down

1 the stairs. [¶] That's what happened. That's the reality fo it. [¶] And  
2 the other reality of it . . . is that I was completely not in my right  
3 state of mind at this interview. I was – I wasn't in my right state of  
4 mind. I wasn't because I just wanted to just convict myself. [¶] But  
5 I was also on suicide watch. I was on suicide watch. I believe I  
6 had even made a news – I had made a noose, and I was going to put  
7 it around my neck and tie it to the – tie it to the cell, tie it to the bars  
8 in the unit and jump off the tier and break my own neck. [¶] That  
9 was just before this . . . . People arrived and pulled me into the  
10 room and started doing the interview with me. That's where my  
11 mind was at. [¶] So when I got in that room, I couldn't physically  
12 kill myself, but I was doing everything I could emotionally,  
13 psychologically and verbally to kill myself."

14 People v. Jackson, No. A120092, 2009 WL 1482217, at \*\*1-4 (Cal. Ct. App.  
15 2009) (Resp't Ex. H).

### 16 STANDARD OF REVIEW

17 This court may entertain a petition for a writ of habeas corpus "in behalf  
18 of a person in custody pursuant to the judgment of a State court only on the  
19 ground that he is in custody in violation of the Constitution or laws or treaties of  
20 the United States." 28 U.S.C. § 2254(a).

21 The writ may not be granted with respect to any claim that was  
22 adjudicated on the merits in state court unless the state court's adjudication of the  
23 claim: "(1) resulted in a decision that was contrary to, or involved an  
24 unreasonable application of, clearly established Federal law, as determined by  
25 the Supreme Court of the United States; or (2) resulted in a decision that was  
26 based on an unreasonable determination of the facts in light of the evidence  
27 presented in the State court proceeding." Id. § 2254(d).

28 "Under the 'contrary to' clause, a federal habeas court may grant the writ if  
the state court arrives at a conclusion opposite to that reached by [the Supreme]  
Court on a question of law or if the state court decides a case differently than  
[the] Court has on a set of materially indistinguishable facts." Williams v.  
Taylor, 529 U.S. 362, 412-13 (2000). "Under the 'reasonable application clause,'

1 a federal habeas court may grant the writ if the state court identifies the correct  
2 governing legal principle from [the] Court's decisions but unreasonably applies  
3 that principle to the facts of the prisoner's case." Id. at 413.

4 "[A] federal habeas court may not issue the writ simply because the court  
5 concludes in its independent judgment that the relevant state-court decision  
6 applied clearly established federal law erroneously or incorrectly. Rather, that  
7 application must also be unreasonable." Id. at 411. A federal habeas court  
8 making the "unreasonable application" inquiry should ask whether the state  
9 court's application of clearly established federal law was "objectively  
10 unreasonable." Id. at 409.

11 The only definitive source of clearly established federal law under 28  
12 U.S.C. § 2254(d) is in the holdings (as opposed to the dicta) of the Supreme  
13 Court as of the time of the state court decision. Id. at 412; Clark v. Murphy, 331  
14 F.3d 1062, 1069 (9th Cir. 2003). While circuit law may be "persuasive  
15 authority" for purposes of determining whether a state court decision is an  
16 unreasonable application of Supreme Court precedent, only the Supreme Court's  
17 holdings are binding on the state courts and only those holdings need be  
18 "reasonably" applied. Id.

## 19 CLAIMS & ANALYSIS

20 Petitioner raises three claims for relief under § 2254: (1) prosecutor  
21 withheld a toxicology report; (2) denial of a speedy preliminary hearing, as  
22 required by state law; and (3) ineffective assistance of counsel based on counsel's  
23 failure to investigate toxicology reports. The claims are without merit.

### 24 A. Suppression of Toxicology Report

25 Petitioner claims that the prosecution withheld a toxicology report from  
26 Dr. Gregory Reiber, a forensic pathologist who testified to the victim's injuries  
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1 and cause of death. According to petitioner, Dr. Reiber's findings – namely that  
2 the victim was asphyxiated – was flawed because Dr. Reibert did not receive and  
3 examine the toxicology report before determining the cause of death.

4 In Brady v. Maryland, 373 U.S. 83, 87 (1963), the Supreme Court held  
5 that "the suppression by the prosecution of evidence favorable to an accused  
6 upon request violates due process where the evidence is material either to guilt or  
7 to punishment, irrespective of the good faith or bad faith of the prosecution."  
8 The Court has since made clear that the duty to disclose such evidence applies  
9 even when there has been no request by the accused, United States v. Agurs, 427  
10 U.S. 97, 107 (1976), and that the duty encompasses impeachment evidence as  
11 well as exculpatory evidence, United States v. Bagley, 473 U.S. 667, 676 (1985).

12 "There are three components of a true Brady violation: [t]he evidence at  
13 issue must be favorable to the accused, either because it is exculpatory, or  
14 because it is impeaching; that evidence must have been suppressed by the State,  
15 either willfully or inadvertently; and prejudice must have ensued." Strickler v.  
16 Greene, 527 U.S. 263, 281-82 (1999). "[T]here is never a real 'Brady violation'  
17 unless the nondisclosure was so serious that there is a reasonable probability that  
18 the suppressed evidence would have produced a different verdict." Id. at 281.

19 Petitioner's claim fails because he does not show that the toxicology report  
20 was exculpatory or otherwise favorable to him. The report petitioner points to  
21 notes that food particles were isolated from a blood clot found in the victim's  
22 airway. See Traverse Ex. A at 4 ("May 2, 2005 Report"). At trial, Dr. Reiber  
23 testified that he investigated the obstruction in the victim's airway to ensure that  
24 the victim did not choke on food. See Resp't Ex. B at 613-14. This is consistent  
25 with the May 2, 2005 Report's finding that the food particles were so small that  
26 they were detected only with the help of a microscopic. Nothing in the May 2,



1 2005 report (or any other toxicology report in the record) undermines Dr.  
2 Reiber's conclusion that the victim did not choke on food, or the California Court  
3 of Appeal's determination that the report "does not suggest in any way that the  
4 food particles discovered in the airway material led to the victim's death."  
5 People v. Jackson, slip op. at 11.

6 In view of the limited value of the May 2, 2005 Report (or of any other  
7 toxicology report in the record) to the defense, it simply cannot be said that the  
8 alleged "nondisclosure was so serious that there is a reasonable probability that  
9 the suppressed evidence would have produced a different verdict." Strickler,  
10 527 U.S. at 281. Nor can it be said that the state court's rejection of petitioner's  
11 claim was contrary to, or an unreasonable application of, Brady and its progeny,  
12 or was based on an unreasonable determination of the facts. See 28 U.S.C. §  
13 2254(d). Petitioner is not entitled to federal habeas relief on this claim.

14 B. Denial of Speedy Preliminary Hearing

15 Petitioner claims that he was denied his right to a speedy preliminary  
16 hearing under California Penal Code section 859b. The claim is without merit  
17 because it is well-established that "federal habeas corpus relief does not lie for  
18 errors of state law." Estelle v. McGuire, 502 U.S. 62, 67 (1991).<sup>1</sup>

19 C. Ineffective Assistance of Counsel

20 Petitioner claims ineffective assistance of counsel based on trial counsel's  
21 failure to investigate toxicology reports that would have shown that the victim's  
22 death was accidental. The claim is without merit.

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23  
24 <sup>1</sup>No federal constitutional right is implicated by the state requirement for a  
25 speedy preliminary hearing either. Although the Sixth Amendment guarantees  
26 the accused the right to a speedy trial in all criminal prosecutions, it has no  
27 application until the putative defendant becomes an accused. See United States  
28 v. Marion, 404 U.S. 307, 313 (1971).

1 To prevail on a claim of ineffective assistance of counsel, petitioner must  
2 pass the two-part test set forth in Strickland v. Washington, 466 U.S. 668, 687  
3 (1984). Petitioner must demonstrate that: (1) "counsel's representation fell below  
4 an objective standard of reasonableness," and (2) "counsel's deficient  
5 performance prejudiced the defense." Id. at 687-88. Concerning the first  
6 element, there is a "strong presumption that counsel's conduct falls within the  
7 wide range of reasonable professional assistance." Id. at 689. Hence, "judicial  
8 scrutiny of counsel's performance must be highly deferential." Id. To fulfill the  
9 second element, a "defendant must show that there is a reasonable probability  
10 that, but for counsel's unprofessional errors, the result of the proceeding would  
11 have been different." Id. at 694. A reasonable probability is a probability  
12 sufficient to undermine the confidence in the outcome. Id.

13 For a federal court reviewing a habeas petition brought by a state prisoner,  
14 "[t]he pivotal question is whether the state court's application of the Strickland  
15 standard was unreasonable," which "is different from asking whether defense  
16 counsel's performance fell below Strickland's standard." Richter v. Harrington,  
17 131 S. Ct. 770, 785 (2011). "The standards created by Strickland and § 2254(d)  
18 are both 'highly deferential' . . . and when the two apply in tandem, review is  
19 'doubly' so." Id. at 788. The court must ask not "whether counsel's actions were  
20 reasonable," but "whether there is any reasonable argument that counsel satisfied  
21 Strickland's deferential standard." Id.

22 Petitioner's ineffective assistance of counsel claim is without merit  
23 because the state courts' rejection of the claim was not objectively unreasonable. See  
24 28 U.S.C. § 2254(d). The California Court of Appeal determined that the reports  
25 petitioner cited "were of no assistance in showing that the victim died  
26 accidentally." People v. Jackson, slip op. at 12. The May 2, 2005 Report did  
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1 "not suggest in any way that the food particles discovered in the airway material  
2 led to the victim's death," and another report petitioner summarized (put did not  
3 produce) did not "even so much as suggest that the victim's death was  
4 accidental." Id. at 11. Consequently, the court concluded that petitioner had not  
5 carried his burden of establishing prejudice because there is "no reasonable  
6 probability that [the reports] would have altered the outcome of these  
7 proceedings." Id. at 12. The state court's application of the Strickland standard  
8 was not unreasonable. See Richter, 131 S. Ct. at 785. After all, the jury had before  
9 it extensive and quite convincing evidence that the victim dies of asphyxiation  
10 after petitioner choked her with a cord and then stuffed paper napkins down her  
11 throat. Petitioner is not entitled to federal habeas relief on this claim.

### 12 CONCLUSION

13 After a careful review of the record and pertinent law, the court is  
14 satisfied that the petition for a writ of habeas corpus must be DENIED.

15 Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a  
16 certificate of appealability (COA) under 28 U.S.C. § 2253(c) is DENIED  
17 because petitioner has not demonstrated that "reasonable jurists would find the  
18 district court's assessment of the constitutional claims debatable or wrong."  
19 Slack v. McDaniel, 529 U.S. 473, 484 (2000).

20 The clerk shall enter judgment in favor of respondent and close the file.

21 SO ORDERED.

22 DATED: April 11, 2012

23   
24 \_\_\_\_\_  
25 CHARLES R. BREYER  
26 United States District Judge