



1 juror was not biased. Trial counsel was not ineffective for failing to object to a biased juror  
2 where there is no evidence of bias.

3         *Second*, Petitioner alleges that his trial counsel rendered ineffective assistance by failing  
4 to call a gang expert to testify that Petitioner participated in killing his victim only because he  
5 was afraid of being harmed by a fellow gang member who was higher than he in their gang's  
6 hierarchy. However, "in California[,], fear for one's own life does not justify killing an innocent  
7 person. Duress is not a defense to murder [and] cannot reduce murder to manslaughter." *People*  
8 *v. Anderson*, 50 P.3d 368, 369 (Cal. 2002). "Moreover, because duress cannot, as a matter of  
9 law, negate the intent, malice or premeditation elements of a first degree murder, . . . duress  
10 [cannot] negate the requisite intent for one charged with aiding and abetting a first degree  
11 murder." *People v. Vieira*, 106 P.3d 990, 1006 (Cal. 2005). Accordingly, expert testimony  
12 supporting an assertion of duress was not relevant to the question of Petitioner's guilt and could  
13 not have affected the outcome of Petitioner's trial. There being no valid purpose in calling a  
14 gang expert to testify, Petitioner's trial counsel was not ineffective for not doing so.

15         *Third*, Petitioner asserts that his right to due process was violated because the trial court  
16 erred in instructing the jury regarding the intent required for aiding and abetting. The trial court  
17 instructed the jury about aiding and abetting with standard instructions CALCRIM Nos. 400 and  
18 401; the trial court declined to supplement the standard instructions with special instructions  
19 proposed by Petitioner that would have required the jury to find that Petitioner had the identical  
20 specific intent as the perpetrator whom he was accused of aiding and abetting. The standard  
21 instructions correctly stated the law, *see People v. Stallworth*, 80 Cal. Rptr. 3d 347, 364–65 (Ct.  
22 App. 2008), and the instructions requested by Petitioner misstated the law, for "[t]he mental state  
23 necessary for conviction as an aider and abettor . . . is different from the mental state necessary  
24 for conviction as the actual perpetrator," *People v. Mendoza*, 959 P.2d 735, 739 (Cal. 1998).  
25 The trial court's refusal to instruct the jury incorrectly did not violate Petitioner's right to due  
26 process.

27         *Fourth*, Petitioner contends that the trial court failed to respond adequately to three  
28 questions from the jury during deliberations. In a note, the jury indicated that it did not

1 understand CALCRIM No. 251, which provides that a crime charged “requires proof of the  
2 union, or the joint operation, of an act and a wrongful intent or mental state,” and the jury  
3 requested a definition of “knowing the consequences” from the provision of CALCRIM No. 728  
4 that “[t]he defendant acted deliberately if he carefully weighed the considerations for and against  
5 his choice and, knowing the consequences, decided to kill.” Regarding CALCRIM No. 251, the  
6 trial court explained that “all crimes require a combination of some kind of intent or mental state  
7 of mind of the perpetrator”; regarding CALCRIM No. 728, the trial court responded that the term  
8 “knowing the consequences” “should be applied using its ordinary, everyday meaning,” and “[i]t  
9 is up to [the jury] to determine what that meaning is.” Later, the jury asked if an aider and  
10 abettor is automatically guilty of first-degree murder, and the trial court responded in the  
11 affirmative, but only assuming unanimous jury findings that a murder occurred, that it was  
12 deliberate and premeditated, and that the defendant was an aider and abettor. It is unclear how  
13 or why Petitioner believes that the trial court’s responses to the jury’s questions were inadequate,  
14 and the responses apparently were helpful, proper, and correct. Accordingly, the trial court did  
15 not fail to respond adequately to the jury’s questions.

16 *Fifth*, Petitioner claims that his right to due process was violated because Juror No. 3 was  
17 biased. As noted above regarding Petitioner’s first claim, there is no evidence that this juror was  
18 biased, and the only evidence indicates that he was not biased. Accordingly, Petitioner was not  
19 deprived of due process because a juror was biased.

20 \* \* \*

21 In accordance with the foregoing discussion, and good cause appearing therefor, the  
22 Court denies the Petition for Writ of Habeas Corpus and declines to issue a certificate of  
23 appealability. The Clerk shall update the docket as indicated in footnote 1, enter judgment in  
24 favor of Respondent, and close the file.

25 *It is so ordered.*

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27 DATED: December 19, 2012

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WILLIAM H. ALSUP  
United States District Judge