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

SHAWN W. MANSON,)	
)	
Petitioner,)	No. C 12-6043 CRB (PR)
)	
vs.)	ORDER DENYING PETITION
)	FOR A WRIT OF HABEAS
RANDY GROUNDS, Warden,)	CORPUS
)	
Respondent.)	
_____)	

Petitioner, a state prisoner at Salinas Valley State Prison, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction and sentence from Santa Clara County Superior Court. For the reasons that follow, the petition will be denied.

STATEMENT OF THE CASE

On June 30, 2011, petitioner was sentenced to a term of 45 years to life, after being convicted by a jury of two counts of lewd acts on a child under 14, and one count of forcible lewd acts on a child. The jury found true that petitioner committed a sexual offense against more than one victim. The jury was unable to reach a verdict on two counts of aggravated sexual assault of a child under 14, and one count of forcible lewd acts on a child.

1 On June 29, 2012, the California Court of Appeal affirmed the judgment
2 of the trial court. That same year, the Supreme Court of California denied
3 review.

4 On November 28, 2012, petitioner filed the instant federal petition for a
5 writ of habeas corpus under § 2254.

6 On February 4, 2013, the court found that the petition, liberally construed,
7 stated cognizable claims under § 2254 and ordered respondent to show cause why
8 a writ of habeas corpus should not be granted. Respondent has filed an answer to
9 the order to show cause. Although given an opportunity, petitioner has not filed a
10 traverse.

11 STATEMENT OF FACTS

12 The California Court of Appeal summarized the facts of the case as
13 follows:

14 Defendant was charged by first amended information with three counts of
15 aggravated sexual assault of a child under 14 (§ 269; counts 1-3), three
16 counts of lewd acts on a child under 14 (§ 288, subd. (a); counts 6-8) and
17 two counts of forcible lewd acts on a child (§ 288, subd. (b)(1); counts 4 &
18 5). The information further alleged that defendant committed sexual
19 offenses against more than one victim within the meaning of section
20 667.61. The alleged victim of counts 1 through 6 was Stephanie Doe, and
21 the alleged victim of counts 7 and 8 was Sabrina Doe.

22 Prior to trial, the People moved in limine for admission of expert
23 testimony on [Child Sexual Abuse Accommodation Syndrome] "CSAAS."
24 Defendant moved to exclude CSAAS evidence "for any purpose either in
25 the People's case-in-chief or on rebuttal." Defendant also moved for leave
26 to present "a counter-expert" if the court denied his motion to exclude
27 CSAAS evidence. The court denied defendant's motion to exclude expert
28 testimony regarding CSAAS. However, the court granted defendant's
motion for leave to call "a 'counter witness,'" and the court stated that the
CALCRIM instruction relating to CSAAS evidence would be given to the
jury.

24 The Prosecution's Case [FN2]

25 FN2. Our summary of the prosecution's case relates only to the
26 three counts for which defendant was convicted.

27 At the time of defendant's May 2011 trial, Stephanie Doe was 15 years old

1 and Sabrina Doe, who is Stephanie's half-sister, was 24 years old. Their
2 mother was 44 years old and defendant, who was a friend of their
3 mother's, and who had a key to their family home, was about eight years
4 younger. Stephanie has known defendant all of her life, and Sabrina has
5 known him since she was about 10 years old. Defendant often babysat
6 Sabrina, Stephanie, and their brother who is three years older than
7 Stephanie. Stephanie testified that "for the most part," she had "a good
8 relationship with" defendant. "He was always nice to me."

9 Stephanie testified that when she was about five years old, she went on a
10 trip to Legoland and Knott's Berry Farm with her mother, father, brother,
11 Sabrina, and defendant. Defendant had "his own room" and her family
12 had "our own room" at their hotel. At some point on the trip, after a day at
13 Legoland, Stephanie told her mother that she had to go to the bathroom.
14 Defendant said that he would take her. When she came out of the
15 bathroom in the hotel room, defendant came close to her, put one hand
16 down her pants, and touched her vagina and her buttocks for about 30
17 seconds to a minute. She tried to move away from him but he held her
18 back with his other hand; she felt like she could not get away. When they
19 heard what sounded like Stephanie's mother's voice, defendant stopped
20 what he was doing and they left the hotel room, but nobody was there.
21 They returned to Legoland and had been gone for approximately 10
22 minutes.

23 Stephanie further testified that she was six when her family stopped seeing
24 defendant regularly, but her mother did not tell her why. She first "recall
25 [ed]" defendant's molestations of her when she was 10 years old while she
26 was in bible class at school. However, she did not tell anybody about the
27 molestations at that time.

28 When Stephanie was 14, while she was attending a church camp, she told
her group leader that she had been molested by a family friend when she
was younger. Stephanie did not disclose any details of the molestations or
name the molester, but she said that the group leader was the first person
to know about it. The group leader told Stephanie that she should let her
parents know. When Stephanie returned home, another camp leader
accompanied her and was present when Stephanie disclosed to her mother
that defendant had molested her. Stephanie's mother was shocked and
started crying; she did not ask Stephanie for any details. The next day,
Stephanie's mother took her to file a police report and they were later
separately interviewed by Detective Mark Natividad. The detective told
Stephanie's mother that he wanted to talk to Sabrina and to Stephanie's
brother about defendant, and the detective said that she should not discuss
any details about Stephanie's disclosure with them before his interviews.

Stephanie's mother called a family meeting at her home. At the meeting
were Stephanie, Sabrina, Sabrina's husband, Stephanie's and Sabrina's
mother, their mother's husband (Stephanie's father and Sabrina's
stepfather), their brother, and two of Stephanie's church youth leaders.
Sabrina and her brother thought it unusual that people other than family
members were at the meeting, but they had no idea what the meeting was
about. Stephanie's mother said Stephanie had something to say.

1 Stephanie asked if everyone remembered defendant and, before she said
2 anything else, Sabrina ran out of the room saying "no, no, no." After
3 Sabrina left the room, Stephanie said that defendant had molested her, but
4 she did not go into detail.

5 Sabrina's mother and husband followed Sabrina. Sabrina locked herself in
6 the bathroom and cried. She said, "it's my fault, it's my fault." She
7 continued crying after she came out of the bathroom and her mother asked
8 her if she needed to talk to a detective. Sabrina answered yes, but she did
9 not say anything further. The next day, Sabrina's mother called Detective
10 Natividad.

11 Sabrina testified that when she was about 10 or 11 years old, while she
12 was still in grammar school, and while her mother and stepfather were
13 having marital problems, she sometimes went with her mother to visit
14 defendant and stay at his parents' house. There, Sabrina slept in a sleeping
15 bag on the floor in an upstairs bedroom in her jeans and a T-shirt. She
16 remembers waking up in the sleeping bag, which was unzipped, being
17 rocked back and forth, and feeling defendant behind her with an erection
18 and with his hand on her stomach. She knew it was defendant because of
19 the way his hand felt. He did not say anything and neither did she; she
20 pretended that she was still asleep. She could not tell if defendant had
21 clothes on. The rocking occurred "for a little while[,] it wasn't just real
22 quick." She did not tell anybody about it, and it happened again each of
23 the "handful" of, or less than five, times she spent the night at defendant's
24 parents' house.

25 Sabrina also testified that there was a mattress in the living room of her
26 mother's house, and she used to watch television while on it. Sometimes,
27 when defendant later came to the house to babysit when Sabrina's mother
28 and stepfather were gone, defendant wrestled with her on the mattress,
during which time he would pin her down on her back, straddle her legs,
and press their private parts against each other while he had an erection.
Each time he did this, she tried to move away, but he held her down.
Sometimes he put his hand over or under her shirt but over her bra and
quickly grabbed her breast, or he tried to put his hand on her buttocks as
she "squirm[ed]" and tried to push him away. The wrestling incidents
occurred at least two to three times a week over a couple years.

29 Sabrina testified that she did not tell her mother about any of these
30 incidents because she did not know what to say or do, so she kept them to
31 herself. The first person she told about the incidents was Detective
32 Natividad.

33 Sabrina further testified that she spent a lot of time with defendant when
34 she was between the ages of 10 and 12. Often, just the two of them went to
35 the mall, out to eat, to the store, or to the movies, but there was nothing
36 sexual about their relationship. Defendant did put his arm around her
37 waist or hold her by her hip when they walked around the mall. When she
38 was 13 or 14, her mother "shut[] down the family's relationship with"
39 defendant without telling her why. However, the family continued to see
40 him on occasion, such as when defendant and his then girlfriend, now

1 wife, visited Sabrina in the hospital after she had her first child. Sabrina
2 testified that she did not tell defendant on that occasion that she felt that
she had been abandoned or deserted by him.

3 Stephanie's and Sabrina's mother testified that she and Sabrina often spent
4 the night at defendant's parents' house during a three-year stretch when
5 Sabrina was between nine and 11 years old. She remembers that on
6 occasion, defendant would wrestle with her children on the mattress she
7 had in her living room and that he would pin them down on the floor. She
8 testified that the trip to Legoland occurred when Stephanie was five years
9 old. During the trip, they all shared a two-bedroom suite at a Residence
10 Inn that was near Knott's Berry Farm and about an hour away from
Legoland, and defendant had one of the bedrooms. There were times
11 when defendant was alone with Stephanie on the trip. In the morning
12 while the family ate breakfast outside the suite, defendant would often
13 take one or more of the children back to the suite before everyone else was
14 finished eating. She remembers that one time defendant took only
15 Stephanie back to the suite while everyone else was still eating breakfast.

16 Sabrina's mother further testified that some time after the Legoland trip,
17 when Sabrina was 13 or 14, she received a call from a friend whose
18 daughter saw defendant and Sabrina at the mall. The friend told Sabrina's
19 mother that her daughter felt that defendant's and Sabrina's behavior there
20 "was not appropriate." Because Sabrina's mother trusted her friend's
21 judgment, she confronted defendant, but he said that nothing was going
22 on. Defendant stopped coming around as often about that same time.
23 Sabrina's mother had the locks changed on her family home and she no
24 longer let defendant babysit her children, but she did not confront Sabrina
25 with what she had heard.

26 Stephanie's and Sabrina's brother testified that he looked to defendant as
27 his older brother, and that defendant never molested him. He also testified
28 that he never saw defendant wrestling with Sabrina or anyone else in his
parent's home.

Carl Lewis, a licensed private investigator and consultant on child sexual
abuse issues, testified as an expert in CSAAS. He testified that CSAAS is
not a diagnosis. "It is background information based on observations and
experience that provides alternative explanations for the often unexpected
and often counterintuitive conditions that often appear" in reported child
sexual abuse cases. Lewis had not done any investigation in or
interviewed any of the people involved in this case because CSAAS "is
not something that can be applied to a particular child or a particular set of
facts." Nor can it be used to discern between true and false allegations.

CSAAS explains "that people delay in disclosing and there are some
explanations for why they do delay." CSAAS has five basic categories:
secrecy; helplessness; entrapment and accommodation; delayed,
conflicted, unconvincing disclosure; and retraction. Each of the categories
provides an alternative explanation for why children do not immediately
come forward with information about a molestation, and not all of the
categories may be present in every case.

1 The Defense Case

2 Marlaina Manson, defendant's wife, testified that she met Sabrina in 2004,
3 at which time Sabrina seemed "kind of standoffish" and "almost like
4 jealous." Defendant had not seen Sabrina in the two years before he and
5 Marlaina saw her in the hospital after she had a baby in 2007. At that time
6 Sabrina said to defendant, "So you, basically what, you come around after
7 two years and now you are just going to abandon us again?" Marlaina
8 encouraged defendant to see Sabrina and her family more often. Just prior
9 to defendant's arrest, Sabrina left a couple voicemails for defendant asking
10 him to do some electrical work for her.

11 Annette Ermshar, a neuropsychologist and board certified forensic
12 psychologist, testified as an expert in CSAAS and human memory. She
13 testified that infants and children have "a very poor ability to make
14 memories or to remember things." Scientific literature suggests that
15 memories of things that occurred between the ages of three years and six
16 years are unlikely to be reliable memories. However, the consensus is that
17 memories tend to be better for traumatic events than neutral or positive
18 events.

19 Dr. Ermshar further testified that CSAAS has been "rejected" by the
20 American Psychiatric Association and the American Psychological
21 Association. It is not a diagnostic tool for forensic purposes; it does not
22 tell us whether a reported molestation actually occurred. CSAAS was
23 created to advocate for the treatment of children "who have known
24 unquestioned, uncontested histories of child sexual abuse." It does not
25 consider alternate explanations for a child's behavior. There are other
26 explanations for secrets; helplessness; entrapment; delayed, conflicted,
27 and unconvincing disclosure; and retractions, that may have nothing to do
28 with actual sexual abuse.

People v. Manson, 2012 WL 2520460, * 1-4 (Cal. Ct. App., June 29, 2012).

DISCUSSION

A. Standard of Review

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

The writ may not be granted with respect to any claim that was
adjudicated on the merits in state court unless the state court's adjudication of the
claim: "(1) resulted in a decision that was contrary to, or involved an

1 unreasonable application of, clearly established Federal law, as determined by the
2 Supreme Court of the United States; or (2) resulted in a decision that was based
3 on an unreasonable determination of the facts in light of the evidence presented
4 in the State court proceeding." Id. § 2254(d).

5 "Under the 'contrary to' clause, a federal habeas court may grant the writ if
6 the state court arrives at a conclusion opposite to that reached by [the Supreme]
7 Court on a question of law or if the state court decides a case differently than
8 [the] Court has on a set of materially indistinguishable facts." Williams v.
9 Taylor, 529 U.S. 362, 412-13 (2000). "Under the 'reasonable application clause,'
10 a federal habeas court may grant the writ if the state court identifies the correct
11 governing legal principle from [the] Court's decisions but unreasonably applies
12 that principle to the facts of the prisoner's case." Id. at 413.

13 "[A] federal habeas court may not issue the writ simply because the court
14 concludes in its independent judgment that the relevant state-court decision
15 applied clearly established federal law erroneously or incorrectly. Rather, that
16 application must also be unreasonable." Id. at 411. A federal habeas court
17 making the "unreasonable application" inquiry should ask whether the state
18 court's application of clearly established federal law was "objectively
19 unreasonable." Id. at 409.

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

1 Id.

2 The standard of review under AEDPA is somewhat different where the
3 state court gives no reasoned explanation of its decision on a petitioner's federal
4 claim and there is no reasoned lower court decision on the claim. In such a case,
5 which applies to several claims petitioner raises here, a review of the record is the
6 only means of deciding whether the state court's decision was objectively
7 reasonable. Himes v. Thompson, 336 F.3d 848, 853 (9th Cir. 2003); Delgado v.
8 Lewis, 223 F.3d 976, 981-82 (9th Cir. 2000). When confronted with such a
9 decision, a federal court should conduct an independent review of the record to
10 determine whether the state court's decision was an objectively unreasonable
11 application of clearly established federal law. Himes, 336 F.3d at 853; Delgado,
12 223 F.3d at 982.

13 Petitioner has also presented several unexhausted claims, however the
14 court may deny them of the merits if they are not colorable. See 28 U.S.C. §
15 2254(b)(2) ("[a]n application for a writ of habeas corpus may be denied on the
16 merits, notwithstanding the failure of the applicant to exhaust the remedies
17 available in the courts of the State"); Cassett v. Stewart, 406 F.3d 614, 624 (9th
18 Cir. 2005) (holding that an unexhausted petition may be denied on the merits
19 when it is perfectly clear that the applicant does not raise even a colorable federal
20 claim).

21 B. Claims

22 Petitioner raises two claims for relief under § 2254: (1) there was
23 insufficient evidence to find petitioner guilty of committing a lewd act on
24 Stephanie (Count 4), and (2) the admission of CSAAS evidence violated
25 petitioner's right to due process. Both claims are without merit.

1 1. Sufficiency of the evidence

2 Petitioner argues that the evidence regarding a forcible lewd act on
3 Stephanie is inherently improbable, and thus insufficient to sustain a conviction.

4 The Due Process Clause "protects the accused against conviction except
5 upon proof beyond a reasonable doubt of every fact necessary to constitute the
6 crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970). A
7 state prisoner who alleges that the evidence in support of his state conviction
8 cannot be fairly characterized as sufficient to have led a rational trier of fact to
9 find guilt beyond a reasonable doubt therefore states a constitutional claim, see
10 Jackson v. Virginia, 443 U.S. 307, 321 (1979), which, if proven, entitles him to
11 federal habeas relief, see id. at 324.

12 The Supreme Court has emphasized that "Jackson claims face a high bar
13 in federal habeas proceedings . . ." Coleman v. Johnson, 132 S. Ct. 2060, 2062
14 (2012) (per curiam). A federal court reviewing collaterally a state court
15 conviction does not determine whether it is satisfied that the evidence established
16 guilt beyond a reasonable doubt. Payne v. Borg, 982 F.2d 335, 338 (9th Cir.
17 1992). The federal court "determines only whether, 'after viewing the evidence
18 in the light most favorable to the prosecution, any rational trier of fact could have
19 found the essential elements of the crime beyond a reasonable doubt.'" Id.
20 (quoting Jackson, 443 U.S. at 319). Only if no rational trier of fact could have
21 found proof of guilt beyond a reasonable doubt, has there been a due process
22 violation. Jackson, 443 U.S. at 324.

23 The California Court of Appeal denied petitioner's claim:

24 "An appellate court must accept logical inferences that the jury might
25 have drawn from the circumstantial evidence." (People v. Maury (2003)
26 30 Cal.4th 342, 396.) "It is blackletter law that any conflict or
27 contradiction in the evidence, or any inconsistency in the testimony of
28 witnesses must be resolved by the trier of fact who is the sole judge of the
 credibility of the witnesses. It is well settled in California that one

1 witness, if believed by the jury, is sufficient to sustain a verdict.'" (People
2 v. Watts (1999) 76 Cal. App. 4th 1250, 1258-1259; see also People v.
3 Cudjo (1993) 6 Cal.4th 585, 608-609.) Reversal is warranted only if it
4 appears "'that upon no hypothesis whatever is there sufficient substantial
5 evidence to support [the conviction].'" (People v. Bolin (1998) 18 Cal.4th
6 297, 331.)

7 In this case, defendant points to numerous conflicts between Stephanie's
8 testimony and her mother's testimony and the other evidence presented
9 about the family's trip to visit Legoland in order to support his contention
10 that Stephanie's claim that defendant molested her on that trip is
11 demonstrably false. For instance, he points to conflicts in the evidence
12 regarding who proposed the trip, what time of day the family left on the
13 trip, and where the inn the family stayed at was located in relation to
14 Legoland. However, we find that, even with the conflicts and
15 inconsistencies in the evidence that defendant points to, there is ample
16 evidence to support defendant's conviction on count 4.

17 Stephanie's mother testified that while on that trip, her family and
18 defendant ate breakfast outside their suite. Often, defendant would take
19 one or more of the children back to the suite before their parents were
20 through eating. And, Stephanie's mother recalled one instance where
21 defendant took only Stephanie back to the suite while everybody else was
22 still eating. Stephanie testified that on one occasion while on that trip,
23 defendant took her back to the suite alone, and that after she left the
24 bathroom in the suite, defendant put his hand down her pants and touched
25 her vagina and buttocks. He stopped when they heard what they thought
26 was Stephanie's mother's voice outside the suite. That Stephanie thought
27 that the lewd acts occurred after she and defendant walked to the suite
28 directly from Legoland, yet there was other evidence demonstrating that
this was impossible, does not warrant reversal of the judgment.
Stephanie's testimony regarding where (in the hotel suite during the
family trip to Legoland), when (after defendant had taken her back to the
suite alone), and how the actual lewd acts occurred (defendant put his
hand down her pants and touched her vagina and buttocks), which was
believed by the jury, is not inherently improbable and is sufficient to
sustain the jury's verdict. (People v. Watts, supra, 76 Cal.App.4th at pp.
1258-1259; People v. Lee, supra, 51 Cal.4th at p. 632.)

Defendant argues that his case is "akin" to People v. Lang (1974) 11
Cal.3d 134 (Lang). We disagree. In that case, nine-year-old twin sisters
both claimed that, in separate incidents in almost identical circumstances
at a birthday party for the defendant, he placed them on his lap "in full
view of various party-goers," and put his hand in their vaginas for three to
five minutes. (Id. at pp. 136-137.) The Supreme Court concluded that an
argument that the sexual molestation described by the twin sisters was
"physically impossible" and that their testimony was "demonstrably false"
had arguable merit. (Id. at p. 139.) "[A] strong argument could have been
made that the twins' testimony was inherently improbable and
insubstantial" because "[e]ach child, using almost identical words, told of
unsuccessfully resisting separate but identical assaults by [the] defendant
in the presence of from six to twelve persons, none of whom saw either

1 assault." (Ibid.) Accordingly, the court found that the defendant had
2 received ineffective assistance of counsel when his former appellate
3 counsel refused to raise an insufficiency-of-the-evidence claim on appeal
even though the defendant clearly wanted him to. (Id. at pp. 136, 138-
139.)

4 The forcible lewd acts on Stephanie that she claimed occurred in this case
5 did not have any of the indicia of inherent improbability present in Lang.
Her testimony regarding the assault was not almost identical to any other
6 reported assault and did not occur in the presence of other persons who
7 did not see it. The evidence supporting the conviction for forcible lewd
acts on Stephanie was sufficient to sustain defendant's conviction on count
4. Reversal of the conviction is not warranted. (People v. Bolin, supra,
18 Cal.4th at p. 331.)

8
9 Manson, 2012 WL 2520460, * 5-6.

10 California Penal Code § 288(b)(1) states, "Any person who commits an
11 act described in subdivision (a) by use of force, violence, duress, menace, or fear
12 of immediate and unlawful bodily injury on the victim or another person, is
13 guilty of a felony." In subdivision (a), the acts described are any lewd or
14 lascivious act upon any part of the body "of a child who is under the age of 14
15 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or
16 sexual desires of that person or the child, is guilty of a felony."

17 Based on Stephanie's testimony alone, the state court's decision was
18 reasonable in concluding that any rational trier of fact could have found
19 petitioner guilty beyond a reasonable doubt. Even though there was conflicting
20 testimony regarding the incident with Stephanie, this court "must presume – even
21 if it does not affirmatively appear in the record – that the trier of fact resolved
22 any such conflicts in favor of the prosecution, and must defer to that resolution."
23 Jackson, 443 U.S. at 326. The state court denial of this claim was not an
24 unreasonable application of Jackson.

25 2. Admission of CSAAS evidence

26 Petitioner argues that the court erred in admitting evidence regarding
27 CSAAS. Specifically, petitioner argues that the evidence was irrelevant,
28

1 generally not accepted in the scientific community, and violated his right to due
2 process and a fair trial

3 The admission of evidence is not subject to federal habeas review unless a
4 specific constitutional guarantee is violated or the error is of such magnitude that
5 the result is a denial of a fundamentally fair trial guaranteed by due process. See
6 Henry v. Kernan, 197 F.3d 1021, 1031 (9th Cir. 1999). Only if there are no
7 permissible inferences that the jury may draw from the evidence may its
8 admission violate due process. See Jammal v. Van de Kamp, 926 F.2d 918, 920
9 (9th Cir. 1991). Moreover, the Supreme Court "has not yet made a clear ruling
10 that admission of irrelevant or overtly prejudicial evidence constitutes a due
11 process violation sufficient to warrant issuance of the writ." Holley v.
12 Yarborough, 568 F.3d 1091, 1101 (9th Cir. 2009) (finding that trial court's
13 admission of irrelevant pornographic materials was "fundamentally unfair" under
14 Ninth Circuit precedent but not contrary to, or an unreasonable application of,
15 clearly established Federal law under § 2254(d)).

16 The California Court of Appeal denied petitioner's claim:

17 In California, when a defendant suggests that an alleged child sexual
18 abuse victim's conduct is inconsistent with his or her accusations of that
19 abuse, expert testimony on CSAAS has been held admissible to disabuse
20 jurors of commonly held misconceptions about how child sexual abuse
21 victims behave. Noting that other states limit or exclude CSAAS
22 evidence, defendant urges this court to hold that CSAAS testimony is
23 inadmissible as improper, irrelevant expert opinion which usurps the
24 jury's function to determine credibility.

25 In People v. Perez (2010) 182 Cal. App. 4th 231, this court rejected a
26 similar challenge to the admissibility of CSAAS evidence. We found "no
27 reason to depart from recent precedent, to wit: 'CSAAS cases involve
28 expert testimony regarding the responses of a child molestation victim.
Expert testimony on the common reactions of a child molestation victim is
not admissible to prove the sex crime charged actually occurred.
However, CSAAS testimony "is admissible to rehabilitate [the
molestation victim's] credibility when the defendant suggests that the
child's conduct after the incident – e.g., a delay in reporting – is
inconsistent with his or her testimony claiming molestation. [Citations.]"
Moreover, it appears that our Supreme Court reached the same conclusion

1 in People v. Brown (2004) 33 Cal.4th 892, 906, in which case we are
2 bound by its reasoning.

3 In this case, Stephanie and Sabrina testified that they delayed reporting
4 defendant's molestations of them. However, they also both testified that
5 they generally had a good relationship with defendant, that he was always
6 good to them, and that they enjoyed seeing and spending time with him.
7 Therefore, expert testimony on CSAAS was admissible ""to disabuse
8 jurors of commonly held misconceptions about child sexual abuse, and to
9 explain the emotional antecedents of abused children's seemingly
10 self-impeaching behavior. . . ." [Citation.]" The trial court allowed
11 defendant to present expert testimony that CSAAS has not attained
12 scientific acceptance and the court instructed the jury with the pattern
13 instruction on CSAAS evidence. [Footnote omitted.] That the jury was
14 able to critically consider Stephanie's and Sabrina's testimony, and not
15 consider the CSAAS testimony as evidence that defendant committed all
16 of the crimes charged against him, is shown by the fact that the jury found
17 defendant not guilty of two of the charged counts and was unable to reach
18 a verdict on three other counts. Accordingly, any error in the admission
19 of the CSAAS evidence in this case did not constitute prejudicial error.
20 Defendant has not shown a violation of his rights to a fair trial and due
21 process.

22 Manson, 2012 WL 2520460, * 7 (internal citations omitted).

23 The Ninth Circuit has approved of the California Court of Appeal's
24 holding in People v. Patino, 26 Cal. App. 4th 1737 (1994), that the use of
25 CSAAS evidence in a child abuse case does not necessarily offend a defendant's
26 due process rights. Brodit v. Cambra, 350 F.3d 985, 991 (9th Cir. 2003). "[W]e
27 have held that CSAAS testimony is admissible in federal child-sexual-abuse
28 trials, when the testimony concerns general characteristics of victims and is not
used to opine that a specific child is telling the truth." Id.

Petitioner's claim is foreclosed by Brodit. The Ninth Circuit has upheld
the use of CSAAS evidence when, as in the instant case, it is used to show the
general characteristics of victims and is not used to opine that a specific child is
telling the truth. Moreover, the trial court instructed the jury that CSAAS
evidence was not evidence that petitioner committed any of the crimes charged
against him, and that the jurors may consider CSAAS evidence only in deciding
whether or not Stephanie or Sabrina's conduct was inconsistent with the conduct

1 of persons who have been molested, when assessing their credibility. This use of
2 CSAAS evidence comports with constitutional requirements. In addition,
3 petitioner cites to no clear Supreme Court law that the state court violated or
4 unreasonably applied.

5 Accordingly, the court denies petitioner's claim.

6 **CONCLUSION**

7 For the foregoing reasons, the petition for a writ of habeas corpus is
8 DENIED.

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

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

15 SO ORDERED.

16 DATED: Feb. 18, 2014

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18 _____
19 CHARLES R. BREYER
20 United States District Judge

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