

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

3 GABRIEL ESCOBAR NEGRON,

No. C 10-1976 CW (PR)

4 Petitioner,

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS; DENYING
CERTIFICATE OF APPEALABILITY

5 v.

6 J. TIM OCHOA, Warden,

7 Respondent.
8 _____/

9 INTRODUCTION

10 Petitioner Gabriel Escobar Negrón, a state prisoner, has filed
11 a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C.
12 § 2254, alleging the following two claims: (1) the trial court
13 erroneously excluded medical evidence regarding the paternity of a
14 domestic violence victim's unborn child, and (2) the trial court
15 violated Petitioner's due process rights by refusing to admit this
16 evidence into the record. On June 24, 2010, the Court issued an
17 Order to Show Cause why the present writ should not be granted. On
18 October 22, 2010, Respondent filed an answer. Petitioner did not
19 file a traverse.

20 Having considered all of the papers filed by the parties, for
21 the reasons discussed below the Court DENIES the petition.

22 PROCEDURAL BACKGROUND

23 On August 14, 2008 a jury found Petitioner guilty of willfully
24 inflicting corporal injury resulting in a traumatic condition upon
25 a cohabitant under California Penal Code § 273.5(a). The trial
26 court sentenced Petitioner to the aggravated term of five years in
27 state prison for the violation of California Penal Code § 273.5(a)
28 with a prior conviction, and further imposed three consecutive one-

1 year sentences for his three prior prison terms, for an aggregate
2 sentence of eight years.

3 Petitioner filed a timely appeal to the California Court of
4 Appeal on May 21, 2009. On December 15, 2009, the state appellate
5 court affirmed the trial court's judgment.

6 Petitioner subsequently filed a petition for review in the
7 California Supreme Court. On February 18, 2010, the state supreme
8 court denied the petition for review.

9 On May 6, 2010, Petitioner filed the present federal habeas
10 petition.

11 FACTUAL BACKGROUND

12 The state appellate court summarized the facts of the case as
13 follows:

14 The victim met defendant in mid-October of 2007.
15 She and defendant began to live together, along with
16 the victim's 10-month-old son, in an apartment in
17 Castroville. In November of that year defendant choked
18 her and then threatened to kill her if she called the
19 police. Defendant left but later moved back and
20 resumed physically and verbally abusing the victim.

21 At some point during this time, the victim
22 discovered that she was pregnant. She told defendant
23 about her pregnancy sometime in November. Defendant
24 was happy about the pregnancy initially but soon
25 resumed being violent. He refused to believe he was
26 the baby's father (we note that the record does not
27 reveal that she told him he was; it does, however,
28 suggest that she may have told him this). He kicked
the victim in the stomach during her pregnancy and
inflicted other injuries.

On December 14, 2007, the victim went to a clinic
in Salinas. While there, she filled out a
questionnaire that asked, among other things, whether
she was in an abusive relationship. She indicated that
she was. The clinic notified the Monterey County
Sheriff's Department, but the victim refused to file a
complaint.

Defendant's attacks on the victim continued as
late as January 5, 2008, and she ended the relationship
on that day. On January 6, the victim changed her mind

1 about her reticence and filed a report with the
2 sheriff's department about defendant's abuse. On
3 January 7, a sheriff's deputy photographed her
injuries. About this time the victim also decided to
have and proceeded with an abortion.

4 (People v. Negron (Op.), No. H033719, 2009 WL 4817744 (Cal. Ct.
5 App. Dec. 15, 2009) at *1-2.)

6 LEGAL STANDARD

7 A federal court may entertain a habeas petition from a state
8 prisoner "only on the ground that he is in custody in violation of
9 the Constitution or laws or treaties of the United States." 28
10 U.S.C. § 2254(a). Under the Antiterrorism and Effective Death
11 Penalty Act of 1996 (AEDPA), a district court may not grant habeas
12 relief unless the state appellate court's adjudication of the
13 claim: "(1) resulted in a decision that was contrary to, or
14 involved an unreasonable application of, clearly established
15 Federal law, as determined by the Supreme Court of the United
16 States; or (2) resulted in a decision that was based on an
17 unreasonable determination of the facts in light of the evidence
18 presented in the State court proceeding." 28 U.S.C. § 2254(d);
19 Williams v. Taylor, 529 U.S. 362, 412 (2000). The first prong
20 applies both to questions of law and to mixed questions of law and
21 fact, id. at 407-409, and the second prong applies to decisions
22 based on factual determinations, Miller El v. Cockrell, 537 U.S.
23 322, 340 (2003). A state court decision is "contrary to" Supreme
24 Court authority, that is, falls under the first clause of
25 § 2254(d)(1), only if "the state court arrives at a conclusion
26 opposite to that reached by [the Supreme] Court on a question of
27 law or if the state court decides a case differently than [the
28 Supreme] Court has on a set of materially indistinguishable facts."

1 Williams, 529 U.S. at 412-13. A state appellate court decision is
2 an "unreasonable application of" Supreme Court authority, under the
3 second clause of § 2254(d)(1), if it correctly identifies the
4 governing legal principle from the Supreme Court's decisions but
5 "unreasonably applies that principle to the facts of the prisoner's
6 case." Id. at 413. The federal court on habeas review may not
7 issue the writ "simply because that court concludes in its
8 independent judgment that the relevant state court decision applied
9 clearly established federal law erroneously or incorrectly." Id.
10 at 411. Rather, the application must be "objectively unreasonable"
11 to support granting the writ. Id. at 409. "Factual determinations
12 by state courts are presumed correct absent clear and convincing
13 evidence to the contrary." Miller El, 537 U.S. at 340. A
14 petitioner must present clear and convincing evidence to overcome
15 the presumption of correctness under § 2254(e)(1); conclusory
16 assertions will not do. Id. Although only Supreme Court law is
17 binding on the states, Ninth Circuit precedent remains relevant
18 persuasive authority in determining whether a state court decision
19 is objectively unreasonable. Clark v. Murphy, 331 F.3d 1062, 1069
20 (9th Cir. 2003). If constitutional error is found, habeas relief
21 is warranted only if the error had a "'substantial and injurious
22 effect or influence in determining the jury's verdict.'" Penry v.
23 Johnson, 532 U.S. 782, 795 (2001) (quoting Brecht v. Abrahamson,
24 507 U.S. 619, 638 (1993)).

25 When there is no reasoned opinion from the highest state
26 court to consider a petitioner's claims, the court looks to the
27 last reasoned opinion of the highest court to analyze whether the
28

1 state judgment was erroneous under the standard of § 2254(d). Ylst
2 v. Nunnemaker, 501 U.S. 797, 801, 806 (1991). In the present case,
3 the California Court of Appeal is the highest court that addressed
4 Petitioner's claims.

5 DISCUSSION

6 Petitioner asserts that the trial court erred by denying him
7 the right to present certain medical records of the victim. He
8 claims that the excluded evidence was highly relevant and should
9 have been admitted because: (1) it directly spoke to the
10 credibility of the victim, and (2) it would not have necessitated
11 undue consumption of the court's time. Petitioner further claims
12 that excluding this evidence: (1) violated his right to a complete
13 defense, (2) violated his Sixth Amendment right to confront
14 witnesses, because his right to cross-examine outweighed the
15 victim's right to privacy, and (3) resulted in prejudice.

16 The following factual background for this claim has been taken
17 from the state appellate court's decision:

18 Defendant claims that the trial court abused its
19 discretion by excluding relevant evidence (see Evid.
20 Code, §§ 210, 351) and violated his rights undergirded
21 by the Fifth and/or Sixth Amendments and the Fourteenth
22 Amendment to the United States Constitution to present
23 a complete defense and his Sixth Amendment right to
24 confront the witnesses against him when it excluded
25 evidence he wished to introduce about the timing of the
26 victim's abortion, namely medical records that might
27 have persuaded one or more jurors that she was pregnant
28 by another man, not defendant, and had falsely or
inaccurately accused him of being the father.

The victim testified that when she told defendant
she was pregnant, "[h]e would always say he wasn't" the
father. During one discussion of the topic he lashed
out at her verbally and kicked her in the stomach,
pulled her hair, and slapped her face. The victim also

1 testified that her first sexual intercourse with
2 defendant occurred on October 28, 2007. Defendant
3 wanted to introduce impeaching evidence that an
4 examination done on December 18, 2007, showed the age
5 of the aborted fetus to be nine weeks, meaning that it
6 could have been conceived in mid-October and defendant
7 would not be the father. Under the principle of falsus
8 in uno, falsus in omnibus, the impeachment evidence
9 could cast doubt among the jurors about the veracity of
10 the victim's entire account that defendant physically
11 abused her.

12 The record does not tell us the evidentiary basis
13 under which the trial court considered the matter. The
14 court ruled, however, that the evidence must be
15 excluded because in the court's view it was only
16 marginally relevant and its introduction would be too
17 time-consuming -- evidently a ruling under Evidence
18 Code section 352, which provides in relevant part that
19 "The court in its discretion may exclude evidence if
20 its probative value is substantially outweighed by the
21 probability that its admission will . . . necessitate
22 undue consumption of time" The court described
23 its reasoning (a description that both parties agreed
24 was accurate) following an unreported discussion with
25 the parties about the evidence: Regarding "the
26 potential introduction of the medical records, . . .
27 the Court had expressed some considerable concern about
28 the fact that this has the potential of invading the
privacy of [the victim]. The Court had an opportunity
to review those medical records in chambers. [¶]
[Defense counsel] had indicated that she wanted to
bring out certain aspects of the medical records that
could potentially impeach [the victim], and I asked for
an offer of proof. The offer of proof was . . . that
it was very likely that [the victim] was pregnant from
an earlier relationship and that medical records would
show that that was indeed the case; that one could then
conclude that she had lied to the defendant by
indicating that he was the father of the unborn child;
and that if she was capable of lying under one
circumstance, then she certainly would be capable of
lying with regard to alleging that she was a victim of
domestic violence."

1 The Court reviewed the medical records and
2 determined that there was the following five facts: [¶]
3 That on December the 13th, [the victim] stated that her
4 last menstrual period was October the 18th of 2007;
5 second, that [the victim] had checked a box on a form
6 indicating that she was in an abusive relationship;
7 third, that on December the 14th the medical staff at
8 the hospital or clinic where she was at contacted the

1 Salinas Police Department to report an abusive
2 relationship as required by law; fourth, that on
3 December the 13th the stenography record indicated that
4 someone, some medical person, wrote down the number
5 '8,' for eight weeks, next to a box asking for the
6 estimated age of the fetus; and fifth, that on December
7 the 18th, 2007, the pathology exam that the exam at the
8 conclusion of the abortion, the pathology exam, showed
9 someone had written in there "age of the fetus, nine
10 weeks."

11 "I -- as a result of this I had a conversation
12 with Counsel in chambers, at which time I told them
13 that the information was sufficiently marginal as to be
14 of minimal relevance in determining whether or not [the
15 victim] may or may not have been telling the truth when
16 talking to the defendant indicating that he was the
17 father of the child; that there were a variety of other
18 issues involved in addressing the potential
19 admissibility of that medical record that would indeed
20 involve an undue consumption of court time, and for
21 those reasons I was not going to allow the medical
22 records into evidence."

23 Defendant acknowledges that the evidence would not
24 establish conclusively that the victim was inaccurate
25 in other details of her testimony -- e.g., the victim
26 "might have been unaware of when her pregnancy started"
27 or "the pathology report . . . might have been
28 inaccurate." But he notes that Evidence Code section
210 provides in pertinent part that "'Relevant
evidence' means evidence, including evidence relevant
to the credibility of a witness . . . having any
tendency in reason to prove or disprove any disputed
fact that is of consequence to the determination of the
action" and observes that the case mainly involved the
jurors' assessment of the victim's credibility inasmuch
as the case rested on the victim's testimony,
buttressed only by photographic evidence that did not
identify him as an assailant. In defendant's view, the
question of the evidence's conclusiveness bears on "the
weight of the evidence, not its admissibility. If the
records had been admitted into evidence, . . . the jury
could have . . . accorded them whatever significance"
it found warranted. Because "the only significant
decision the jury had to make was whether or not [the
jurors] believed" the victim, the trial court, in
defendant's view, abused its discretion by excluding
the evidence and violated his constitutional rights.

(Op. at *2-3 (alterations in original).)

1 The state appellate court described the applicable law as
2 follows:

3 "On appeal, 'an appellate court applies the abuse
4 of discretion standard of review to any ruling by a
5 trial court on the admissibility of evidence'"
6 (People v. Hovarter (2008) 44 Cal.4th 983, 1007-1008.)
7 A trial court abuses its discretion when its ruling
8 falls outside the bounds of reason. (People v.
9 Benavides 35 Cal.4th 69 at 88.)

10 The foregoing rule applies to limit both the
11 admissibility of relevant evidence and the scope of our
12 review of a ruling excluding it. "'As with all
13 relevant evidence . . . , the trial court retains
14 discretion to admit or exclude evidence offered for
15 impeachment. [Citations.] A trial court's exercise of
16 discretion in admitting or excluding evidence is
17 reviewable for abuse [citation] and will not be
18 disturbed except on a showing the trial court exercised
19 its discretion in an arbitrary, capricious, or patently
20 absurd manner that resulted in a manifest miscarriage
21 of justice [citation]' [Citation.] '[T]he discretion
22 to be exercised is that of the trial court, not that of
23 the reviewing court. Thus, even if the reviewing court
24 might have ruled otherwise in the first instance, the
25 trial court's order will yet not be reversed unless, as
26 a matter of law, it is not supported by the record.'" (People v. Tuggles (2009) 178 Cal.App.4th 1106, 1128.)

27 (Id. at *3-4.)

28 The state appellate court rejected this claim as
follows:

Here, we cannot say that the court abused its
discretion, i.e., was unreasonable to conclude that the
evidence would have been unduly time-consuming in
relation to its potential probative value. The medical
records would not have necessarily established that the
victim was misleading defendant about the identity of
the unborn child's father, only that her apparent
belief that he was the father possibly was incorrect.
That would not have taken anything away from the
content of her testimony, and inferences that could
reasonably be derived therefrom, that she apparently
communicated to defendant that he was the father and he
reacted badly to the news, at one point becoming angry
and kicking her in the stomach, pulling her hair, and
slapping her face.

1 (Id. at *4.)

2 As explained above, Petitioner argues that admitting medical
3 records about a discrepancy in the paternity of the unborn child
4 could discredit the witness sufficiently to undermine the rest of
5 her testimony about being a victim of domestic violence. However,
6 the state courts were not unreasonable in finding Petitioner's
7 theory too attenuated to justify admission. The trial court did
8 not abuse its discretion by excluding the medical evidence, nor
9 was it unreasonable to conclude that the evidence would have been
10 unduly time consuming in relation to its potentially probative
11 value. Therefore, the state appellate court's decision to uphold
12 the trial court's decision was reasonable.

13 Petitioner's due process claim is also not compelling. As
14 the state appellate court articulated:

15 As for defendant's constitutional claims, we
16 discern no violation of any constitutional guaranty.
17 "[F]undamental fairness [is] the touchstone of due
18 process" (Gagnon v. Scarpelli (1973) 411 U.S.
19 778, 790.) Thus, for the court's evidentiary ruling to
20 have risen to the level of a due process violation
21 because it denied him a right to present a defense, it
22 must have rendered defendant's trial fundamentally
23 unfair. Because the court's ruling did not violate
24 state law in the first instance, a fortiori we perceive
25 no due process violation. That is also true to the
26 extent that the right to present a defense implicates
27 the Sixth Amendment and with regard to defendant's
28 Sixth Amendment confrontation clause claim. All of
these claims rest on defendant's claim of error under
state law, and, therefore, because defendant's state
law claim fails, so necessarily must his constitutional
claims. "[R]ejection on the merits of a claim that the
trial court erred on the issue actually before that
court necessarily leads to rejection of the newly
applied constitutional 'gloss' as well. No separate
constitutional discussion is required in such cases,
and we therefore provide none." (People v. Lewis and
Oliver (2006) 39 Cal.4th 970, 990, fn. 5 [addressing a
due process claim that hinged on a claim of state-law
error].)

1 (Id. (alterations in original).)

2 The Sixth Amendment and the due process guarantee of
3 fundamental fairness afford an accused in a criminal trial the
4 right to present a defense. Chambers v. Mississippi, 410 U.S.
5 284, 294 (1973); Clark v. Brown, 450 F.3d 898, 904 (9th Cir. 2006)
6 (citing California v. Trombetta, 467 U.S. 479, 485 (1984)). The
7 Supreme Court has made clear that the erroneous exclusion of
8 critical, corroborative defense evidence may violate the Sixth
9 Amendment right to present a defense, as well as the due process
10 right to a fair trial. DePetris v. Kuykendall, 239 F.3d 1057,
11 1062 (9th Cir. 2001). However, "[s]tate and federal rulemakers
12 have broad latitude under the Constitution to establish rules
13 excluding evidence from criminal trials." Holmes v. South
14 Carolina, 547 U.S. 319, 324 (2006) (quotations and citations
15 omitted). The "Constitution permits judges to exclude evidence
16 that is repetitive, only marginally relevant or poses an undue
17 risk of harassment, prejudice or confusion of the issues." Id. at
18 325-26.

19 Here the state appellate court found that the exclusion of
20 the medical evidence did not violate the state evidentiary rules
21 or Petitioner's constitutional rights to present a defense and due
22 process. Moreover, the excluded evidence was only marginally
23 relevant. According to Petitioner, the excluded evidence was
24 intended to show that if the victim lied about one issue -- i.e.,
25 the paternity of the unborn child -- then all of her testimony
26 would be in question. However, even if the evidence showed the
27 victim had lied in the past, it is not necessarily admissible.
28 Even if Petitioner's logic were correct, the evidence could still

1 be excluded because of the discretion the trial court has to
2 exclude evidence that is only marginally relevant.

3 In sum, for the reasons explained by the state appellate
4 court, the trial court reasonably found that the excluded medical
5 evidence had minimal, if any, relevance. Therefore, excluding
6 such evidence did not violate Petitioner's constitutional rights
7 to present a defense or to a fundamentally fair trial guaranteed
8 by due process. See Montana v. Egelhoff, 518 U.S. 37, 42 (1996)
9 (holding that due process does not guarantee a defendant the right
10 to present all evidence, regardless of how marginal its
11 relevance). Accordingly, the state appellate court's denial of
12 this claim was neither contrary to nor an unreasonable application
13 of federal law. Therefore, Petitioner's due process claim is
14 DENIED.

15 CONCLUSION

16 For the foregoing reasons, the Court DENIES the petition for
17 a writ of habeas corpus on all claims.

18 Further, a Certificate of Appealability is DENIED. See Rule
19 11(a) of the Rules Governing Section 2254 Cases. Petitioner has
20 not made "a substantial showing of the denial of a constitutional
21 right." 28 U.S.C. § 2253(c)(2). Nor has Petitioner demonstrated
22 that "reasonable jurists would find the district court's
23 assessment of the constitutional claims debatable or wrong."
24 Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may not
25 appeal the denial of a Certificate of Appealability in this Court
26 but may seek a certificate from the Ninth Circuit under Rule 22 of
27 the Federal Rules of Appellate Procedure. See Rule 11(a) of the
28 Rules Governing Section 2254 Cases.

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The Clerk of the Court shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: 6/21/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE